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Asistent **LUCREȚIA PETRI**

LIMBA ENGLEZĂ

II

CULEGERE DE TEXTE DE SPECIALITATE
DREPT

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Asistent LUCREŢIA PETRI

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Prezenta culegere de texte de specialitate este destinată studenţilor Facultăţilor de Drept.

Textul a fost analizat în colectivul de catedră care s-a declarat de acord cu multiplicarea în actuala redactare.

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CUVÎNT ÎNAINTE

Culegerea este menită să pună la dispoziţia studenţilor din anul II (începînd cu semestrul doi) şi anul III de la Facultăţile de Drept texte de specialitate din principalele domenii ale dreptului, cu ajutorul cărora să-şi poată perfecţiona cunoştinţele de limbă engleză dobîndite în primele trei semestre de studiu, precum şi să se familiarizeze cu terminologia specifică diferitelor ramuri de drept.

Lucrarea cuprinde note explicative şi un vocabular englez-român la întocmirea cărora s-a ţinut seama de sensul cel mai util pentru înţelegerea textelor în care apare expresia sau cuvîntul respectiv.

Fiind vorba de o culegere de texte juridice în care figurează şi texte din literatura juridică a unor ţări nesocialiste, a existat intenţia de a se cuprinde, prin textele respective, un domeniu cît mai larg al limbii engleze "juridice", atît ca structură a ei, cît şi ca vocabular, limbă care prezintă serioase deosebiri faţă de limba obişnuită; în ceea ce priveşte conţinutul textelor respective, aceste se referă la reglementări din dreptul

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ţărilor nesocialiste, pe care studenţii au astfel posibilitatea să le compare cu dreptul socialist român şi să constate superioritatea acestuia din urmă.

Pe această cale mulţumesc Decanatului Facultăţii de Drept şi cadrelor didactice de la Facultatea de limbi germanice care au sprijinit alcătuirea culegerii.

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NICOLAE CEAUȘESCU

Speech at the Festive Meeting Dedicated to the Semicentenary Anniversary of the Romanian Communist Party.

ROMANIA'S FOREIGN POLICY, TOKEN OF THE ROMANIAN PEOPLE'S INTERESTS, OF THE CONTEMPORARY SOCIETY DEVELOPMENT REQUIREMENTS

Dear Comrades,

We celebrate the 50th anniversary of the Party in the circumstances of profound changes in the social-political life of the world, in human thinking and knowledge, in the balance of forces on a world level, in the conditions in which ever newer social forces join the struggle for social progress, for democracy and peace.

The essential feature of the contemporary epoch is the assertion of socialism in an increasing number of states, its growing role in and influence on international life. As is known, the victory of the Great October Socialist Revolution laid the foundation for the building of the first socialist state in the world, produced a deep breach in the world capitalist system, deepened the general crisis of capitalism, ushered in the era of the proletarian

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revolutions, gave a powerful impetus to the struggle for national and social liberation. The Soviet peoples have successfully built socialism and have gone over to the creation of the technical-material base of the communist society. The existence of the Soviet Union - with her huge economic, political and military potential - has always had a particular role in the struggle of the revolutionary, progressive forces all over the world, exercised and exercises a powerful influence on the evolution of international life.

After the Second World War, in the circumstances of the defeat of fascism, as a result of the growing revolutionary upsurge of the peoples, of the increasing role and fighting capacity of the communist and workers' parties, new and profound changes have occurred in the world. As is known, the people's revolution was victorious and socialism has triumphed in Romania and in a series of other European countries: the People's Republic of Albania, the People's Republic of Bulgaria, the Czechoslovak Socialist Republic, the German Democratic Republic, the Federative Socialist Republic of Yugoslavia, the Polish People's Republic and the Hungarian People's Republic.

Of huge international significance has been the victory of the revolutionary struggle waged for almost two decades by the Chinese people under the leadership of the Communist Party for overthrowing the old regime and for abolishing imperialist domination. The creation of the Chinese People's Republic has brought about a radical turning point in the destinies of the Chinese people and, at the same time, has produced a historic change in the balance of forces on a world scale. The appearance of the Chinese People's Republic on the world political scene, the creation of the People's Democratic Republic of Korea and of the Democratic

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Republic of Vietnam, as well as the existence of the Mongolian People's Republic, have considerably increased the forces of socialism, which include over one third of the planet's population. At the same time, of particular importance was the victory of the revolution in Cuba, the creation of the first socialist state on the American continent.

The socialist system appeared as a result of socialism expanding to more than one country, of its assertion on a world scale, on a large part of the world, of the victory of the new system, in fourteen states. It embodies an objective social reality, expresses the existence of socialism, as a mode of production, in a number of states that are developing independently, in a great diversity of economic and political conditions, of historical particularities, states which are building the new society guided by the objective social laws, by the Marxist-Leninist teaching. The continuous strengthening of the world socialist system takes place as a result of a law-like process, both following the continuous flourishing of the socialist countries and the embarking of other peoples on the road of building the new society.

Another characteristic of the contemporary social development is the ever increasing assertion - of the working-class - as the most remarkable social force of the modern world. The scope and upsurge of the revolutionary struggle of the proletariat in the capitalist countries is permanently growing; its role in the political life is increasing as also in the confrontation with the exploiting classes, with the monopolies, in defence of the economic and political rights of the working people. In the course of the class battles, the tendency toward the achievement of the unity of action of the working class is manifest more and more preg-

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nently and the cooperation of the communist parties with the socialist and social-democratic parties, with other organizations of the working class, is developing and strengthening.

Both our own experience and the experience of the international working-class movement, demonstrate that only by united action can the working class fulfil its historic mission in the revolutionary struggle, can it coalesce around it all the progressive, advanced forces of society, can it successfully lead the peoples to social and national liberation.

The analysis of the processes that take place in the world of today, spotlight the development and maturity of the communist and workers' parties in an increasing number of capitalist countries, their assertion as national political forces enjoying the adhesion and sympathy of the broad people's mass and have a considerable say in the life of the respective states.

The crumbling of the colonial system of imperialism has led to a radical change in the social-political map of the world and in the balance of forces internationally. The new states that have appeared in the post-war period assert more and more energetically their determination to defend the independence won in battle, to find the paths of democratic socialist development, which would give them the possibility of using to their own benefit the national wealth, the fulfilment of the people's aspirations for wellbeing. Historic experience stresses the particular importance of the rallying, in those countries, of all the revolutionary and democratic forces, among which an important place is held by the communists for safeguarding the gains obtained, for defence against the imperialist policy of domination.

A particular intensification is witnessed by the social

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movements in the countries of Latin America and Africa, by the struggle of the peoples of those continents for the defence of national independence, against the interference of the imperialist circles in their domestic affairs, against the economic subordination by the foreign monopolies, for self-dependent development, for social progress.

Newer and newer social forces are rising in the capitalist world in favour of progressive changes in society, for the building of a better and juster life, for peace. Among these are the masses of peasantry, which, in a number of countries hold a significant weight and have an important role in the economic and social-political life. Acting on the same line are the middle sections and other social categories objectively interested in the promotion of a policy of defending the national interests, in the struggle against the monopolies, for cooperation among peoples.

The intelligentsia acts with increasing determination - upon it the technical-scientific revolution, the growing role of science and culture in the development of society confer a particular place in the struggle for civilization, for putting the human genius in the service of knowledge, of progress and peace - and not in the service of exploiting and oppressing the peoples. We may say that a specific feature of present-day society is the ever more powerful assertion of intelligentsia as a progressive, revolutionary force.

A great reservoir of energy and combativity in the anti-imperialist movement is represented by the large masses of women, accounting for over a half of the word's population. The women take part more and more actively in the struggle against capitalist exploitation, racial discrimination, against the policy of war and

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aggression, for the defence of the tranquility and security of their homes, of their homeland.

A striking characteristic feature of our days is the determined entrance of the young generation on the arena of the social battles. The protest of the youth resounds with particular vigour, in numerous capitalist countries - the youth which, as a matter of fact, has always been in the front ranks of the struggle for progress - against injustices and inequalities that govern the social organization in capitalist states. Millions and millions of young people in the capitalist world ask more and more acutely: What will the world of tomorrow look like? What will the future, their life, be like? The younger generation vehemently rises against war - in which it is called to give the heaviest tribute of blood - for social justice and equality, for setting up relations of trust and peaceful collaboration among states, for security and peace.

Realistically minded bourgeois politicians, social circles of different political, philosophical and religious orientations and convictions, inclusive of representatives of the religious cults in different capitalist countries, also act at the service of democracy, détente and international cooperation.

It may be justly said that in the course of history the fight for progress, democracy and peace has never known such an intensity, such large-scale dimensions. That is why the analysis of the social development, of the action of the objective laws of realities in a continuous transformation gives us reason to state that there are great prospects for the democratic, revolutionary and anti-imperialist struggles, which give us the right to look to the future of the world with confidence, a future that cannot but be a socialist one.

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Of course, pointing to the growing anti-imperialist movement, underlining the gladdening prospects of social development, we do not forget for a moment that imperialism still exists, that there are still reactionary forces which try to hamper the progressive evolution of society, that maintain the danger of war, representing a permanent danger for peace. The imperialist circles carry on a policy of tension in the relations among states, of domination and dictate, they interfere in the internal affairs of other peoples, try to maintain by force of arms reactionary, anti-popular regimes in different countries, keep and give rise to sources of animosity and conflict in different parts of the world.

The historic path of confrontation between the forces of peace and forces of war, between the progressive world and imperialism is obviously neither smooth nor straight. The struggle knows both victories and temporary defeats, moments of offensive as well as of ebbing.

However, life shows that superiority is on the side of the anti-imperialist front, that society advances unabatedly, in accordance with the objective laws of historic development; nothing and nobody can stop this process, the peoples cannot be stopped in building a better, free and independent life. The implementation of mankind's aspirations for progress imposes that the social revolutionary and anti-imperialist forces act in close unity both on the national and international plane, and that they unite their efforts and constantly strengthen their cohesion. This is the fundamental condition of the victory in the fight against imperialism, for peace and social progress.

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Dear Comrades,

Setting out from the Marxist-Leninist analysis of the processes taking place in the world, the Party and the Government of our country have developed and are developing a broad international activity, largely develop foreign relations and take an active part in the struggle for détente and cooperation.

As a socialist country, Romania pays primordial attention to the development of friendship, alliance and cooperation with all the peoples that are building the new society. We are expanding the links of cooperation, friendship and solidarity with the Soviet Union, with the neighbouring socialist countries,with all the socialist countries in Europe; we also develop broad relations of friendship, cooperation and solidarity with the Chinese People's Republic as well as with the other socialist countries in Asia and Latin America. Our good relations with all the socialist countries are an illustration of the correctness of our country's foreign policy, laid down by the Ninth and Tenth Congresses of the Romanian Communist Party - a policy which sets out from the general interests of socialism. The developments eloquently demonstrate that only on the basis of such a policy, only by consistently acting for the achievement of cooperation and friendship with all the socialist countries can one ensure the unity and cohesion of the forces of socialism, their growing prestige and authority in the world. The steps taken by a number of socialist states on the line of overcoming the conflicts, of normalizing the relations between them, demonstrate the possibility of achieving unity in the interest of every people building the new system, of the general cause of socialism.

Concomitantly with the appearance of the socialist countries, the necessity has also arisen for establishing a new type of interstate relationship; these relations are quite different from those

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established among the countries in the capitalist world - based upon inequality and national oppression, on the domination of the weak by the strong. The aim of the relations of cooperation between the socialist countries, based on equality and mutual respect, is to facilitate and stimulate the economic and social progress of each country, of contributing to the development and welfare of each socialist nation, of guaranteeing the ever stronger assertion of the specific nature and creative force of each people.

This is the objective way of strengthening friendship and solidarity among peoples, of the rapprochement and understanding among nations, of creating a world of cooperation and friendship, dreamt of along the centuries by the most enlightened minds of mankind, the founders of Marxism-Leninism.

There is no contradiction between the concern for the multilateral flourishing of each nation, for the prosperity of the socialist homeland and the principles of socialist internationalism. On the contrary, these two facets of the policy of the Communist Party make up a unitary, indivisible whole. Accordingly, we consider that one must fight against the national narrow-mindedness and isolation as well as against the hegemony and chauvinism of a great power - strongly indicted by Lenin in his time, both tendencies damaging not only the national interest of the peoples but also the general cause of socialism. It is necessary that the struggle be carried on on both fronts and most resolutely for the observance of the national interest of each people and the strengthening of their international solidarity, thus achieving the dialectical unity between the national and the international.

Our Party and State are working and will be working in this spirit; by ensuring the successful development of socialist con-

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struction in Romania, by strengthening cooperation with the socialist countries, by militating for strengthening their unity we fulfil our main national duties towards our own people as also the internationalist duties towards the socialist countries, towards the working people throughout the world.

Dear Comrades,

By implementing the principles of peaceful co-existence, by taking account of the necessity of participating in the international division of labour, Romania expands her relations with all countries, irrespective of social system. The promotion and expansion of international cooperation is an objective necessity for the progress of each country separately, for the development of human civilization generally, as an essential condition of establishing a climate of trust among peoples, of security and peace in the world. No country that wishes to progress, to benefit by the fruit of the gains of contemporary science and technology and that at the same time wishes to make its contribution to solving the major problems facing mankind, can remain outside this process. We consider that the development of the relations of the socialist countries with the other countries serves peace and security, contributes to the establishment of equality of rights among the states.

One of the directions of our foreign policy is the development of the relations with the newly independent states, that have embarked on the road of independent economic and social development. In the last few years, our country has extended its contacts and intensified cooperation with states in Asia and Africa, with many countries in Latin America. Romania's relations with the

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developing countries and with other states concerned with their economic and social progress are characterized by reciprocal advantage, contributing to the economic, scientific and cultural development of our countries; at the same time, they are part of the general struggle against imperialism and neo-colonialism, against all forms of domination and enslavement of the peoples, contributing to the intensified participation of our countries in the international political life.

It is also known that Romania largely develops her relations both on a political and on the economic, technical-scientific and cultural planes with the developed capitalist countries, that she extends her cooperation with the latter in the effort for détente, for the establishment of peace and cooperation in the world.

The relations with all states, irrespective of social system, are firmly based on the principles of national independence and sovereignty, fully equal rights, non-interference in internal affairs and mutual advantage. These principles largely embraced by the peoples are more and more strikingly asserting themselves as the only ones capable of ensuring normal and fruitful relations among states, of advoiding fresh conflicts, of improving the international atmosphere. I have been asked during some interviews, if Romania thinks of giving up advocating these principles. You know the answer, but I would like to say more here. We consider that, in a way, these principles are for present-day human society, for the cooperation relations in the world as necessary as water and air for man's existence. How could we possibly renounce to water and air? It would mean to give up living. No, we cannot renounce to these principles, because they are the very condition of our independent and free life, of the independent and free life of

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all the world nations. The observance of the right of each people to decide its own destinies, or to choose self dependently their way of development is the cornerstone of international cooperation. Any kind of damage or prejudice to this sacred right, to the sovereign rights of the peoples, causes tension, endangers security and peace. It is therefore necessary for the new principles to be asserted in international law, principles that are the outcome of the historic evolution, of the present day aspirations of the peoples as well as the energetical unfolding of the struggle for imposing these principles in the practice of inter-state relations. An important role in observing international legality devolves upon the United Nations Organization which must achieve the principle of its universality so as to be able to fulfil this mission...

It is more and more evident that the finding of acceptable solutions for the major problems facing mankind today is inconceivable without the intensive participation of all states in international life, in the struggle for security and peace. Each country, irrespective of the size of its territory and population, of its economic and military strength, can and has the duty to make its contribution to the constructive solution of all thorny international problems. It is clear that the small and middle-sized countries representing the majority of the states in the world can play today, alongside of the big powers, a remarkable part in the world arena, can influence to a considerable extent the developments in the spirit of the wishes of the peoples for peace and cooperation.

The recent events bring into bold relief, as a very positive feature, the tendency towards approaching the complex problems of the world, of inter-state disputes through negotiations, discussions and contacts. I should like to recall in this respect the

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international bodies with a political, economic, social and scientific character - and especially the importance of the activity of the Disarmament Committee from which international public opinion expects much more. Worth mentioning are also the inter-state agreements recently concluded and which are important steps in liquidating the residues of the Second World War. Of particular importance is the Treaty concluded between the Soviet Union and the Federal Republic of Germany on refraining from the threat or use of force. Among these actions are also the Treaty between the Polish People's Republic and the Federal Republic of Germany... Followed with interest are also the SALT negotiations, carried at present in Vienna and Helsinki, between the Soviet Union and the United States of America for limiting the production of new types of atomic weapons.

A more realistic approach to international issues, starting from the recognition of the post-war realities is also quite evident. In this respect significant is the fact that the German Democratic Republic has been recognized by a steadily growing number of states and that a number of countries have established diplomatic relations with the Republic of Cuba and the People's Democratic Republic of Korea. Within the same context are the re-establishment of diplomatic relations between several countries and People's China, the ever more marked tendencies in the capitalist world towards normalizing relations with the Chinese People's Republic...It is well known that the main obstacle in the way of normalizing the relations between the United States of America and People's China has always been the discriminatory policy promoted by the American gorvernment as well as the perpetuation of the military occupation of Taiwan. The normalization of the relations of all capitalist states, the United States of America

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included, with the Chinese People's Republic - without whose participation the solving of the great problems of international life is unconceivable - corresponds to the cause of cooperation among states with different social systems, to the interest of peace and international security.

What proves the ever greater weight gained by the method of contacts and negotiations in international life and in inter-state relations? The fact that ever broader circles of public opinion understand that the only alternative to a new destructive world war is the discussion of the litigious issues with a view to finding new methods of understanding, liquidating discriminations in the relations between peoples, the unfolding of a vast and active international cooperation. Continued efforts are necessary for the development of this positive process, for eliminating all factors which prevent the peoples from understanding and cooperating with one another.

It is in this spirit that this country most consistently acts; developing large contacts and exchanges of governmental visits as well as visits of a different nature, including the top level ones, with many states on all continents, actively participating in the activity of international organizations, we are making our contribution to the intensification of cooperation among all states, to promoting détente in international life.

An important problem to which Romania, in her capacity as a European country, pays ceaseless attention is the ensuring of peace and security in Europe. In our opinion, the implementation of this desideratum is an essential factor in establishing a sound atmosphere on our continent, in normalizing the relations among all states, in excluding the threat or use of force from the

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political life of this very tested continent.

We consider that considerable steps have been made lately towards the creation of conditions for the implementation of security in Europe; speaking up on this line were numerous state leaders, broad circles of public opinion, and the idea of holding an All-European Conference has gained ground and, as you know, a consensus has been reached concerning the participants in the Conference as well as the working out of some items of the agenda. The achievement of fresh progress in the preparation and holding of this Conference calls for the renunciation of pre-established conditions. In our opinion the Conference must not be conditioned by the solving of outstanding problems or problems accumulated after the Second World War, because its very purpose is to open the path towards the settlement of these problems, of paving the road towards the establishment of a climate of détente, cooperation and security on the continent. The Romanian Government considers that the organization of preparatory meetings should be started at the earliest possible time, with the participation of all states concerned, for the holding of the Conference - answering in this way the wish of the peoples that aspire most burningly towards the implementation of European security. Within the efforts made for security on our continent, Romania pays special attention to regional understandings and, in the first place, to strengthening good neighbourly relations in the Balkans. The transformation of the Balkans into a zone of peace and good understanding, without nuclear weapons, corresponds to the vital interests of all the peoples in that region, and therefore it is necessary that all governments should act along this direction.

Setting out from the idea that peace is indivisible in the

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world today, Romania resolutely speaks up and acts for the extinguishing of all the hotbeds of tension and conflict that still prevail in different parts of the world...

One of the most burning aspirations of mankind today is the implementation of general disarmament and in the first place of nuclear disarmament. In the conditions when the arms race is weighing so heavily on the life of the peoples, when tremendous stockpiles of conventional and atomic weapons have been and continue to be accumulated in the world, when nuclear technique has reached such perfection that it makes vulnerable any region of the globe, endangering the whole human civilization, the intensified fight for disarmament has became an imperative necessity. It is necessary that all peoples take part in the implementation of this vital desideratum; in this respect we consider it necessary that the Geneva Conference should be attended by all the states concerned, approaching more concretely the practical ways of disarmament, just as we consider that most useful would be the organization of a General Conference of all states for the discussion of the disarmament problem and in the first place of nuclear disarmament.

It is high time, in our opinion, to go over from general discussion on disarmament to the taking of concrete measures. Most useful would be even the taking of partial measures, like the dismantling of nuclear bases existing on the territories of other states, the withdrawal of the troops to within the national territory, the reduction of military expenditures and others, meant to create propitious conditions for the abolishment of the North Atlantic Pact and, concomitantly, of the Warsaw Treaty, of all the military blocs. The peoples which bear the brunt of the tremendous military expenditures, which, in a new world conflagration would

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have to pay an unimaginable tribute in blood, urge that most resolute action be taken on the line of disarmament, until it is not too late. We know that there are forces that see in the disarmament prospect a danger to their narrow interests. It is precisely therefore that public opinion, all those who wish to defend their life, should raise their voice and resolutely act to impose disarmament, the destruction and banning of all nuclear weapons. We must not expect that these vital problems of mankind be solved only at the table of negotiations; it is necessary that the peoples should fight to defend, by their own force, their life, security and the prospect of the development of human civilization. The masses alone can impose disarming, they alone shall achieve it.

We consider that a major duty of all the peoples, of all the peace-loving countries, of all the progressive social forces is to energetically act for the establishment of an atmosphere of fruitful cooperation among nations, for the elimination from international life of all factors that generate aggression, interference in the internal affairs of other states. On the occasion of this solemn anniversary, I wish to express once again the determination of our Party and State to struggle also in the future with all its energy in order to create the necessary conditions for the peoples of the world to live and work in understanding and cooperation, in peace and security.

(May 7, 1971, pp.62-82).

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THE INTERNATIONAL COURT OF JUSTICE

The belief that nations, like individuals, are subject to some common fundamental law is traditional, but the present body of international law has resulted chiefly from comparatively recent recognition that States cannot live in isolation from one another. Hence, countries have entered into treaties covering a wide range of subjects e.g. air routes, fishery conservation, the rule of the road at sea, and tele-communications, and their observance is the main concern of international law.

In 1899 a special court - the International Court - was set up at the Hague. Its fifteen judges are today elected by the Security Council and the General Assembly of the United Nations for a term of nine years. Selection is based on qualifications,not nationality, though no two judges may come from the same country and representation must be secured for the principal legal systems of the world.

The Court carries out two main functions - it hears disputes between States and gives advisory opinions to United Nations bodies and inter-governmental agencies. Such opinions, unlike the Court's judgments, are not legally binding on the organisation or agency requesting them. In arriving at its decisions, the International Court follows the usual judicial procedure. It applies the rules contained in treaties recognized by the disputing States,legal principles and practices accepted internationally, and those rules of law found in the judicial decisions and the teaching of legal authorities in the various States.

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But the International Court is very different from the /national/ courts described in chapter 18. First, it will not consider cases submitted by individuals, who must seek redress in the courts of their own country. Secondly, it can only consider disputes which parties agree to submit to it, for international justice is still optional. Thus, in 1959, Iceland refused to allow her dispute with the United Kingdom over territorial fishing rights to go to the Court.

Thirdly, the International Court has no bodies comparable with police and prisons, so the acceptance of its autority is purely voluntary...

Does the Court affect the sovereignty of individual States ? A government will not usually accept the jurisdiction of the Court when political issues are involved, even though such refusal may weaken its position in the eyes of other nations. Indeed, it is because legal questions are not always distinguishable from the political and economic interests of disputing nations that the observance of international law is not made obligatory. ... But when legal principles can be applied to a dispute, its decisions are usually accepted. In any case, appeal to it allows time for tempers to cool and alternatives to the use of force to be found.

THE UNITED NATIONS ORGANIZATION

The United Nations was set up in 1945 at a time of achievement and of hopeful looking forward. Its purposes are:

(1) to take effective collective measures for maintaining international peace;

(2) to develop friendly relations among nations, based on

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respect for the principle of equal rights and self-determination;

(3) to achieve co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting respect for human rights and the fundamental freedoms without distinction as to race, sex, language or religion;

(4) to be a centre for harmonising the actions of nations in attaining these common ends.

... The chief organs are the General Assembly and the Security Council.

The General Assembly, the chief deliberative organ, meets once a year but can be called in an emergency. Each of the member countries has one vote, but any recommendations upon which action is necessary must be referred to the Security Council.

THE IMPACT OF THE UNITED NATIONS ON NATIONAL GOVERNMENTS

Some form of world government is now a permanent feature of modern civilisation. As André Maurois prophetically said of the League of Nations: "Whether people want it or not, their destinies are now so closely intertwined that... if tomorrow some catastrophe destroyed it, it would come to life again under another name."... Such wide recognition invests an international body with a moral authority which cannot be entirely ignored even by sovereign States. This can be appreciated by studying its most important functions.

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(I) The maintenance of peace

Already the United Nations has had to consider several serious disputes... To what extent can it influence sovereign nations in such matters ?

In the first place, since discussion is the only alternative to force, the United Nations, by providing such a forum, helps towards a peaceful solution.

Secondly, nations are now placed in a position where they have to justify their actions before the bar of world opinion[1]. In the United Nations such opinion can be swiftly expressed with force and clarity. ... Thus, the United Nations may be looked upon as the most important international "pressure group." The response of a nation to United Nations' resolutions will depend on how much it values world opinion, how essential a part of its policy is under discussion, and how deeply its prestige is involved... No country is entirely unheeding of world sentiment, and the importance of having an institution which can express it should not be underestimated. ...

Thirdly, the United Nations may take physical action in a crisis. ...

Finally, although the United Nations has little power to change the domestic policies of member nations, it can outline ideals of political behaviour, criticise if those ideals are not being followed in particular countries, and make recommendations to the government concerned. Its Commission of Human Rights has studied the repatriation of prisoners if war, compensation for Nazi victims, and racial policy in South Africa, and in each case made recommendations.

1. Before the bar of world opinion = în fața instanței opiniei publice mondiale.

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(4) Administration of international affairs

The United Nations' Secretariat consists of the Secretary-General, appointed by the General Assembly upon the recommendation of the Security Council, and such staff as the organisation may require. The Secretary-General has three functions - to act as the chief administrative officer of the United Nations; to bring to the attention of the Security Council any matters which threaten international peace; to report to the General Assembly on the work of the organisation.

The administration of the United Nations raises interesting questions relating to State sovereignity, for many thousands of nationals from member countries now form an international civil service scattered throughout the world, in the headquarters at New York, at the International Labour Office in Geneva, with the Food and Agriculture Organization in Rome, and so on...

The creation of the Secretariat is a notable development in international collaboration...

The British Constitution
by J.Harvey, B.Sc.(Econ.) and
L.Bather, B.A., Ph.D.
pp.544-551
London 1964

RIGHTS AND OBLIGATIONS CONNECTED WITH DIPLOMACY

The affairs of nations could not be conducted without mutual intercourse. Every state, however barbarous, recognises this, and even savage tribes respect the persons of heralds and envoys. But

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among the family of civilized nations who are subjects of International Law intercourse is carried on to a great and steadily increasing extent; and with its growth has grown a system of regulating it by special formalities, employing special agents to carry it on, and granting them special immunities.

In the Middle Ages when the intercourse between peoples was comparatively meagre, negotiations were only occasional incidents in the life of a state. They were carried on by envoys, sent abroad to do the special business on hand[1] and expected to return as soon as it was finished. The service was often one of difficulty and danger, for though the persons of ambassadors were held sacred in the country to which they were sent, they received little protection in the states they passed through on the way. There were plenty of robber bands for them to guard against and plenty of physical obstacles for them to overcome. The revival of commerce and letters at the time of the Renaissance and the immense impetus given to human activity by the discoveries of the New World, made intercourse between states more common and more necessary than before. But the introduction of the practice of sending permanent ambassadors to reside at foreign courts is due more to statecraft than to utility. It began in the fourteenth century among the great Italian republics; but Louis XI of France, who reigned from 1461 to 1483, is said to have been the first sovereign in western Europe to resort to it, his design being to have a sort of chartered spy at the court of each of his powerful neighbours. After a time, the convenience of the practice secured its general adoption, and by the middle of the seventeenth century it had become reconized as the regular

1. to do the special business on hand = să îndeplinească sarcina respectivă.

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method of carrying on diplomatic intercourse. But it had to win its way[1] against a mass of jealousy and suspicion, caused largely by the unscrupulous character of the early diplomatists. "If they lie to you, lie still more to them", said Louis XI to his ambassadors. "An ambassador", said Sir Henry Wotton in a punning epigram, "is a person who is sent to lie abroad for the benefit of his country". Henry VII of England is praised by Coke as a "wise and politique King" because he would not suffer ambassadors from other states to remain at his court after their immediate business was finished; and as late as 1660 threats were uttered in the Polish Diet that the French ambassadors would be treated as spies if they did not return home. But the new system became a necessity as the complexity of international affairs increased in the seventeenth century; and in spite of the unfavourable opinion of Grotius who says that resident embassies may be excluded by states, and speaks of them as "now common but not necessary," it grew and prospered, and many and various observances grew up with it and were gradually embodied in International Law.

At first, diplomatic ministers were of one kind, and were usually called ambassadors and were supposed to represent the person as well as the affairs of their sovereign. Louis XI of France introduced the custom of sending persons of an inferior sort, termed agents, to transact his affairs without representing his person. His diplomacy frequently worked in secret. He sometimes sent his barber on an occult mission, and it is obvious that his purpose would have been defeated by an exhibition of state ceremonial.

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2. but it had to win its way = dar această metodă trebuia să ajungă să fie în general recunoscută.

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Thus matters stood at the beginning of the seventeenth century, when permanent legations became common. Soon after we find the agent disappearing from the ranks of diplomatic ministers, and becoming merely a person appointed by a prince to manage his private business at a foreign court. But the distinction between the representative of his sovereign's person and the representative of his sovereign's affairs continued to be made. The first was called an ambassador, the second an envoy or an envoy extraordinary. Bellow the envoy in rank came at the beginning of the eighteenth century a third class called residents. Vattel says of them that their "representation is in reality of the same nature as that of the envoy," but custom undoubtedly ranked them bellow the second order of diplomatic ministers. Sometimes they had no letters of credence[1], and in that case their mission must have been of a semi-private character. To these three orders of diplomatic agents was added in the eighteenth century a fourts, that of ministers. According to Vattel, this was done to avoid the constant disputes about precedence which seem to have taken up no small portion of the time and energy of the diplomatists of the seventeenth and eighteenth centuries. He says, "The minister represents his master in a vague and indeterminate manner,which cannot be equal to the first degree, and consequently makes no difficulty in yielding to an ambassador." He is entitled to all the regard due to a person of confidence to whom the sovereign commits the care of his affairs, and he has all the rights essential to the character of a public minister. The very essence then, of a minister was the indeterminate character of his position. He was "not subjected to any settled ceremony," and we cannot there-

1. letters of credence = scrisori de acreditare.

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fore rank him with the other kinds of diplomatic agents. The only thing absolutely fixed about him was that he came bellow an embassador in order of precedence. Sometimes he was called minister plenipotentiary, a title which seems to have implied higher rank than that of simple minister.

The Principles of International Law
by T.J.Lawrence, M.A., L L.D.
Chapter V
pp. 271 - 274
London

JURISDICTION OVER MERCHANT VESSELS ON THE HIGH SEAS

303. Legal position of merchant vessels on the high seas.- The jurisdiction which a State may lawfully exercise over vessels flying its flag on the high seas is a jurisdiction over the persons and property of its citizens; it is not a territorial jurisdiction. The grounds on which this jurisdiction rests arise simply "from the fact that they are property in a place where no local jurisdiction exists." It is necessary for many purposes that jurisdiction over a vessel shall be vested in a specific State; it is natural to concede a right of jurisdiction to the owner of property until his claim as such is opposed by a superior title on the part of someone else and "no right to jurisdiction over a vessel can, within the range of the purposes contemplated, be superior to that of the State owning her."

304. Fiction of the territoriality of a ship.- This, however,

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is not the only view which has been advanced as a justification for the exercise of jurisdiction by a State over its merchant ships. It has been contended that ships are floating portions of the nation to which they belong and that they are therefore a continuation or prolongation of its territory. This doctrine is based on a fiction or metaphor. Thus Westlake states that "on the high seas, the territorial character impressed on the ship by its flag is a fiction as accurate for purposes of jurisdiction as a fiction can ever be." It appears to have been first put forward in the "Exposition des Motifs" prepared by the Prussian lawyers in 1752 to justify the confiscation, as against the English creditors, of the Silesian loan, on the specious argument that "the Prussian vessels, although laden with property belonging to the enemies of England, were a neutral place, whence it follows that it is exactly the same thing to have taken such property out of the said vessels as to have taken it upon neutral territory." The exposition has been rightly described as "a repertory of bad law", and adduces no evidence for denying the right of English warships to seize enemy goods in neutral vessels in accordance with the then established international usage which went back to the Consolato del Mare.The answer given to the Prussian contentions by the British jurists, Sir George Lee, Sir Dudley Ryder and William Murray (later Lord Mansfield), summarises the true principle on the subject and has ben characterised by Montesquieu as "une réponse sans réplique". It has been consistently followed by Great Britain, and as Lord Stowell put it in 1804, "the great and fundamental principle of British maritime jurisprudence is that ships upon the high seas compose no part of the territory of a State."

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305. Case of "The Lotus". - The doctrine of the territoriality of a ship has been advanced much more recently by the Permanent Court of International Justice in the case of The Lotus, which was, however, only reached by the casting vote of the President of the Court. The case will be examined in greater detail hereafter; but at this stage it is submitted that the majority of the judges would not have arrived at the conclusion on which their decision was based had their minds not been affected by the theory of the territoriality of a merchant ship on the high seas. M.Huber, in delivering the judgment of the Court, declared that "a corrollary of the principle of the freedom of the seas is that a ship on the high seas is assimilated to the territory of the State the flag of which she flies, for, just as in its own territory, that State exercises its authority upon her, and no other State may do so." It may well be contended that the doctrine is obsolete. The late Lord Finlay, who dissented from the conclusion reached by the Court, said that the argument that the crime had been committed on board a Turkich ship, and, therefore, on Turkish territory was "a new and startling application of a metaphor, and, that this view appears to be based on a misconception of the proposition that a ship on the high seas may be regarded as part of the territory of the country whose flag she flies." In his opinion, "a ship is a moveable chattel; it is not a place; when on a voyage it shifts its place from day to day, and from hour to hour, and when in dock, it is a chattel which happens at the time to be in a particular place."

308. Nationality of merchant ships.- The freedom and safety of navigation on the high seas are rendered possible by a combination of the rules of international and municipal law. The

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high seas constitute a highway for international trade and navigation. Modern international law has developed this freedom of intercourse and provided for the maintenance of law and order on the high seas by the recognition of the jurisdiction which States exercise over the vessels which fly their flags. Such jurisdiction is, as has already been pointed out, not over the high seas, but over the property and persons upon it. International law does not lay down any rules relating to the right of a vessel to fly a particular flag, but it imposes a duty on every State having a merchant navy, to regulate, by its own municipal laws, the conditions under which a vessel claims to sail under its flag. The nationality of a ship is one of the guarantees offered by international law for the freedom of navigation, and every ship which sails the high seas must possess a national character and be in a position to provide evidence of it. The possession of a nationality is the basis for the intervention and protection by a State; it is also a protection for other States for the redress of wrongs committed by those on board against their nationals. ...

313.- Ship's papers.- In addition to a flag, ships must also carry papers, which provide a more efficient means of testing a ship's nationality. Here again neither the number or the nature of the papers required are specified by international law and the regulations vary in different countries. The following is a List of Papers carried by British merchant vessels:

(1) The Certificate of Registry, or Passport, Sea-Letter or Sea-brief, showing the vessel's nationality and specifying her owner and other particulars necessary for identification;
(2) the Muster Roll, a list of all the members of the crew, their nationality and articles of agreement; (3) the Log-books (viz. the

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official log-books and the ship's log), which must contain a full record of the voyage and all nautical particulars; (4) the Manifest of Cargo, containing a list of the goods carried by the vessel, their numbers of markings, and the names of the shippers and consignees; (5) the Bills of Lading, which are the duplicates of the documents which the master of the vessel delivers to the consignor of the goods on shipment; (6) the Charter Party, if the ship is chartered for the current voyage undertaken by her; (7) the Bill of Health; the safety certificate; the last customs clearance; the wireless certificate and the mail receipts (if the vessel carries mail). In addition, if the vessel is a passenger ship, she must carry the passenger certificate and the passenger list.

These papers are of importance in time of war, but they are equally necessary in time of peace, as they enable the master to provide definite proof of the nationality of his ship and of the nature of her cargo whenever so required under a rule of municipal or international law. ...

318.- Jurisdiction on crimes.- This concrete principle may be illustrated by reference to several judgments given by British and American Courts. In 1860, Captain Lesley, the master of a British ship, The Louisa Braginton, entered into a contract with the Chilean Government to carry from Valparaiso to Liverpool some political prisoners who had been banished from Chile. These persons were taken on board and brought to England against their will, and on arriving at Liverpool they preferred an indictment against Lesley for assault and false imprisonment on the high seas; Lesley was found guilty. Erle, C.J., held that "it was clear that an English ship on the high seas, out of any foreign territory, is subject to the laws of England." In this case the crime was committed, as soon

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as the ship left the territorial waters of Chile, by the captain of the ship, who was also a British subject. There are decisions of the Criminal Courts in England which have held that the law of the flag is equally applicable where the criminal was a foreigner on board a British ship on the high seas. In Reg.v.Anderson the crime took place in a British ship lying in the Garonne "below bridge, and where the tide ebbs and flows, and great ships do lie and hover." The prisoner, who was a foreign sailor, was indicted before the Central Criminal Court and sentenced, the conviction being affirmed by the Court for Crown Cases Reserved. That Court, however, agreed that the local authorities in France had concurrent jurisdiction and might have enforced it if they had thought fit. The question has accordingly been raised as to whether the Courts of the State whose flag the vessel flies are exclusively competent to decide occurrences taking place on board where a foreign subject is concerned. It is submitted that the State whose subjects are on board a foreign ship can appreciate as it thinks fit and attach what consequence it likes to[1] such acts, provided that in so doing it does not exclude or supplant the primary jurisdiction of the State whose flag the vessel flies. If this principle be accepted, it affords a method of dealing with crimes which might otherwise remain unpunished.

319.- Reg.v.Lewis.- The case is based on the principle that British Courts will not exercise jurisdiction over crimes committed on board a foreign ship by members of the crew who are not British subjects. A United States citizen on board an American ship ill-treated a sailor so severely that when the vessel reached

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1. and attach what consequence it likes to... = şi să dea ce fel de urmare doreşte ...

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Liverpool he was taken ashore in a dying condition and expired the same day. The culprit was arrested and charged with manslaughter, but acquitted, the Court holding that it could not apply to an American vessel an English statute which provided that where any person being feloniously stricken or otherwise hurt upon the sea or at any place out of England shall die of the stroke in England, every offence committed in respect of such a case may be dealt with and punished in the county or place in England in which such death shall happen as if such offence had been wholly committed in that county or place. Since that case was decided, The Merchant Shipping Act, 1894, has conferred jurisdiction of the English Courts in respect of offences occurring on board a British ship on the high seas by a person who is not a British subject "if he is found within the jurisdiction of any Court in Her Majesty's dominions." The Courts have also jurisdiction in the case of offences committed in British vessels, not only on the high seas, but also in any place either ashore or afloat, by any master, seaman or apprentice who at the time or within three months previously was employed in a British ship .But the important point in the case of Reg.v.Lewis was that the accused was not only a foreign subject, but was also a member of the crew of a foreign ship, and this explains why the Court did not exercise jurisdiction.The contrary view taken in America under a similar statute in Massachusetts, where a British subject was convicted of the manslaughter of a man who died in that State in consequence of injuries inflicted on board a British ship on the high seas. ...

324.- The case of"The Lotus".- The judgment of the Permanent Court in the case of The Lotus, to which a brief reference has already been made, raised important questions on a State's

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right to interfere with foreign vessels on the high seas with regard to crimes affecting its own nationals. It arose out of a collision between two merchant ships - The Boz-Kourt (Turkish) and The Lotus (French) - near Mitylene and outside Turkish territorial waters. The Turkish vessel was sunk and eight Turkish subjects lost their lives. At the time of the collision, the officer of the watch on board The Lotus was M.Demons, a French lieutenant in the merchant service, whilst The Boz-Kourt was in charge of the captain, Hassan Bey, who was saved from the wreck. The Lotus continued her voyage to Constantinople after the collision, but on her arrival there, the Turkish authorities held an enquiry and ultimately arrested M.Demons and Hassan Bey, both of whom where charged with manslaughter. M.Demons objected to the jurisdiction of the Court, but his objection was overruled and the two prisoners were convicted and sentenced to a term of imprisonment and a fine. France protested against the trial of M.Demons by the Turkish Court, and after negotiations between the French and the Turkish Governments, it was agreed to refer to the Permanent Court of International Justice the question whether Turkey acted in conflict with the principles of international law by instituting "joint criminal proceedings, in pursuance of[1] Turkish law, against M.Demons as well as against the captain of the Turkish steamer in consequence of the loss of The Boz-Kourt which involved the death of the Turkish sailors and passengers." The ground on which the Court came to a decision related to the question of the legality of a State legislating in such a way, as Turkey had done, so as to extend the application of its laws and the jurisdiction of its

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1. in pursuance of... = conform cu ...

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Tribunals to offences committed outside its territory against the person or property of its nationals. The Court held that "Turkey had not acted in conflict with the principles of international law" in instituting the criminal proceedings because, amongst other reasons, the act committed on board The Lotus produced its effects on board The Boz-Kourt and thus, as it were, on Turkish territory, "giving Turkey jurisdiction over its foreign perpetrator." The Court further held that there was no rule of international law prohibiting such legislation and that States enjoyed in this respect a wide measure of discretion. This decision was, however, reached only by the casting vote of the President (Dr.Max Huber).

325.- Conflicting opinions in "The Lotus" case.- The case, as already stated, raised several controversial questions. On one point, however, there is general unanimity, viz.that a State is entitled to exercise jurisdiction over foreigners for offences committed within its territory. In his learned judgment, Dr.John Bassett Moore distinguished between two classes of cases:(a) where the offence is committed by a person while he is physically within the territory; (b) where the offence is committed by a person while he is physically outside the territory, but which takes effect within it (e.g. where a man on one side of the frontier fires at and hits a person on the other side). These two classes of cases Dr.Moore described respectively as "subjective" and "objective" territorial jurisdiction. It was also held by the Court that the jurisdiction of the flag-State over its ships on the high seas was not higher or more exclusive than the jurisdiction of a State over its territory and that there was no rule of customary international law rendering such jurisdiction exclusive. Several of the dissenting judges held that there was such a rule. It was further

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decided that the doctrine of objective territorial jurisdiction applied to a foreign ship on the high seas so that she was assimilated to national territory. On the question whether a State can exercise jurisdiction over a foreign national for an act committed by him in a foreign country whereby one of its nationals suffered injury, the judgment in The Lotus is inconclusive; but Judge Moore disputed the correctness of the provisions of the Turkish Penal Code on the ground that a country cannot claim either to apply "its penal laws to other countries and to what takes place wholly within such countries, or if it does not claim this, that it may punish foreigners for alleged violations, even in their own country, of laws to which they were not subject." This is in accordance with Lord Russell's classical judgment in the Jameson case: "one very general canon of construction is this: that if any construction otherwise be possible, an Act will not be construed as applying to foreigners in respect of acts done by them outside the dominions of the sovereign Power enacting. That is a rule based on international law, by which one sovereign Power is bound to respect the subjects and the rights of all other sovereign Powers outside its own territory."

In January 1929 a communication was received by the League of Nations from the International Association of Mercantile Marine Officers, expressing their concern about The Lotus judgment which was capable of involving masters of ships "in double prosecutions". The question was also considered by the International Maritime Committee at its Antwerp (1930) and Oslo (1933) Conferences, and by a number of Latin American States at their Montevideo Conference in March 1940 which adopted a treaty on "International Penal Law."

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Article 8 of the treaty provides that "crimes committed on the high seas, whether on board airplanes, men-of-war or merchant ships, must be tried and punished according to the law of the State whose flag the vessel flies."

The International Law of the Sea
by C.John Colombos, LL.D.
Chapter VIII
The Legal Regime of Merchant Ships
1959
pp.246-267

HUSBAND AND WIFE

I. THE MEANING OF "M A R R I A G E"

Importance of proving existence of a marriage

The occasions are frequent and various upon which the existence of a marriage must be established as a preliminary to legal proceedings. The matter may concern many different parts of the law. Thus the institution of a matrimonial cause, such as a petition for divorce, judicial separation or annulment of marriage, implies that the parties are related to each other as husband and wife. If a person claims an inheritance as the widow or widower of the deceased; if a beneficiary under a will asserts a right to pay death duties at a lower rate, as being the surviving spouse of the testator; in each case a preliminary to success is proof that a regularly constituted marriage exists. The existence of the marriage tie is equally essential in several departments of crimi-

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nal law, as, for instance, where, in the case of desertion, cruelty or assault by her husband, a woman seeks relief under the Summary Jurisdiction Acts 1895-1925, or where a person is prosecuted for bigamy. All these matters, and indeed many others, may raise a problem of private international law, since the parties in question may, for instance, have contracted a union abroad which, though valid by the lex loci celebrationis or by the lex domicilii, does not create the status of marriage according to English law.

The English conception of marriage

Since the consensual union of man and woman, the one common factor of every marriage, may possess diverse features according to the law to which it is subject, each legal system must determine what its attributes shall be in order to create the relationship of husband and wife. The English view is that it must be the voluntary union for life of one man and one woman to the exclusion of all others. It must be monogamous and it must not be for a limited period.

English law requires the union to be potentially indefinite in duration

The requirement of a life-long union does not mean that a marriage must be indissoluble, but that in the eyes of the lex loci celebrationis it must be potentially indefinite in duration. The facility with which according to that law it may be dissolved is irrelevant to its nature at the time of its creation. The one essential in this respect is that the parties have married in a form which envisages that in the ordinary course of things they will cohabit as man and wife for the rest of their lives. ... The remedy of divorce is an incident not of the marriage contract,

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but of the resulting status, and as such it is the sole concern of the law of the country where from time to time the parties are domiciled.

Meaning of "Christian marriage"

The form of marriage recognized by English law is generally described as a "Christian marriage", but this reference to religion is misleading. Whatever may be the religion of the parties or of the country in which they marry, their union is a marriage in the English sense provided that in the eyes of the relevant law it possesses the two attributes of indefinite duration and the exclusion of all other persons. Monogamy, for instance, is not and never has been the monopoly of Christianity. Given these two attributes, the union constitutes an English marriage notwithstanding that it may have been contracted in what the mid-Victorian judges were wont to call[1] an "infidel country", or contracted between non-Christians.

Potentially polygamous marriages

The exclusion of polygamy from the English concept of marriage extends to a marriage that is potentially polygamous though in fact monogamous. If a husband is entitled by the law that determines the nature of his marriage to take a plurality of wives, his marriage is polygamous notwithstanding that at the time when the question is raised he has not exercised that right. If the marriage is polygamous at its inception it retains this character, although it may also be potentially monogamous.

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1. in what the... judges were wont to call... = în ceea ce judecătorii ... erau obişnuiţi să numească...

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Thus in Sowa v. Sowa, a polygamous marriage was celebrated in Ghana where the parties were domiciled. Prior to the ceremony the husband promised the wife that he would go through a later ceremony which, according to the law of Ghana, would convert the union into a monogramous marriage. He failed to carry out his promise.

It was held that despite this promise and despite the fact that the husband had not taken an additional wife, the marriage remained polygamous.

Mehta v. Mehta

In conformity with this reasoning, a marriage that is monogamous in its inception is not to be regarded as potentially polygamous merely because the husband is free by a change of religion to join a polygamous sect.

The Sinha Peerage Claim

It must be noticed, however, that the decision of the Committee for Privileges of the House of Lords in the Sinha Peerage Claim conflicts with the above authorities. It was there held that the union of two Hindus, who had married in Bengal in 1880 at a time when polygamy was part of Hindu law, was to be regarded as monogamous and that therefore their son was entitled to succeed to his father's peerage. The ratio decidendi was that though the marriage was polygamous at its inception, yet the husband had never taken another wife and had, indeed, joined a religious sect, one of whose tenets was that a second wife must not be taken during the lifetime of the first. To reconcile this decision with the other relevant authorities and especially with the reverse situation that arose in Mehta v. Mehta, requires considerable ingenuity, but some comfort may be derived from the fact that it is merely of

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persuasive authority, since the only function of the Committee of Privileges, which is not a court of law, is to advise the House of Lords.

What law determines the nature of a marriage?

The fact that the concept of marriage is not uniform in all legal systems raises two problems.

First, what law determines the nature of a marriage?

Secondly, is the nature of a marriage to be determined in the light of the facts existing at its inception or at the time when its nature is questioned in legal proceedings?

Lex loci celebrationis determines the question of indefinite duration

What law determines the nature of a marriage? In effect, the inquiry here is to identify the law that determines whether the union conforms to the English concept of marriage. As we have seen, two requirements must be satisfied, the first of which is that the union is potentially for an indefinite period. The relevant law to govern this question is clear beyond all doubt[1]. As was held in Nachimson v. Nachimson, it is the lex loci celebrationis. It could be no other.

Law that determines question of monogamy not settled

On the other hand the law that determines whether the requirement relating to monogamy is satisfied has not yet been settled beyond all doubt.

1. The... law... is clear beyond all doubt = legea... e limpede dincolo de orice îndoială.

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If, for instance, a woman domiciled in England marries a Moslem in London and then cohabits with him in Pakistan where he is domiciled, what law determines whether her marriage is monogamous or polygamous?

The choice lies between the English lex loci celebrationis and the Pakistani law of the matrimonial domicil. There is, unfortunately, no case in which this issue has been squarely raised. ...

2. CAPACITY TO MARRY

A. Objections to the rule as commonly stated

Usual view: law of domicil of each party must be satisfied

According to the traditional and still prevalent view capacity to marry is governed by what may conveniently be called the dual domicil doctrine. This prescribes that a marriage is invalid unless, according to the law of the domicil of both contracting parties at the time of the marriage, they each have capacity to contract that particular marriage. This is said to be true whether the incapacity is "absolute", i.e. one which forbids a person, such as an infant, to marry anyone; or "relative", i.e. one which forbids two individual persons, such as an uncle and niece, to marry each other. ...

The doctrine would be comparatively innocuous if the expression "the law of the domicil of each party" were construed to mean, not the rule that would be applied in that domicil to a purely domestic case, but the rule applicable to the particular marriage in question, i.e. to one containing a foreign element. A domestic rule,

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such as one forbidding a marriage between a man and his niece, need not be inevitably extended to a conflict of law cases where, for instance, the niece, though domiciled at present in England, proposes to marry a man domiciled in Russia and to cohabit with him in that country. In such a case an English court might conceivably decide that this particular rule of the lex domicilii does not apply to marriage that is primarily the concern of Russian law.

Application of this view may cause injustice

If, however, "the law of the domicil" means, as in practice it is in this context taken to mean, the internal law of the country concerned, the application of the dual domicil doctrine may produce a result that is calculated to shock the conscience of all save the most obstinate of doctrinaires. Re Paine affords a good example of this.

An English testatrix, who died in 1884, left a sum of money on trust for her daughter, W, for life, and, if she died leaving any child or children surviving, then on trust for her absolutely.

W was a British subject domiciled in England. In 1875 she travelled to Germany and married H, her deceased sister's husband, a German subject. H had lived in England for some time shortly before the marriage, and he and his wife continued to live there until their respective deaths. He died in 1919, she died some twnty years later. One daughter of the marriage survived W.

In these circumstances the legacy to W would not become absolute unless the surviving daughter was her legitimate child, for the rule is that a reference in a will to a "child" means a legitimate

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child only, unless a different intention can be collected from the context. Whether the daughter was legitimate depended upon whether the marriage in 1875 was valid. At that time a marriage between a woman and her deceased sister's husband was prohibited by English law, but allowed by German law. BENNETT, J., adopted the dual domicil doctrine and held the marriage to be void because of the incapacity attaching to W under her pre-marriage lex domicilii.

In the circumstances the decision, though not the ratio decidendi, was unexceptionable, since the parties intended to establish, and did in fact establish, their matrimonial home in England. It was, therefore, for English law to determine the desirability of their marriage. But the dual domicil doctrine pays no regard whatsoever to the country where the parties cohabit as husband and wife. The doctrine would have required BENNETT, J., to reach the same decision had the parties lived together in Germany for the rest of their lives without once returning to England. Had this been the case the woman according to German standards would have been a lawful wife and a respectable member of society. Under the dual domicil doctrine, however, despite her abandonment of England, she would have possessed the status of a concubine and her sin would inexorably have been communicated to her children. A doctrine which can work such havoc[1] with human happiness and which is so out of harmony with[2] what the reasonable man would expect is suspect. It is not common sense and for that reason alone is probably not part of the common law. As will be suggested

1. ... which can work such havoc... = care poate să distrugă într-atît...
2. ... which is so out of harmony with... = care este atît de mult în dezacord cu ...

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later, it is sociologically unsound, wrong in principle, and in practice ineffectual in the sense that in the majority of cases its apparent object can be frustrated without difficulty.

Rival view based on matrimonial home

It is submitted that the correct doctrine is that which submits the question of capacity to what may briefly be termed the law of the intended matrimonial home, or as Cook prefers to call it, the law of the intended family domicil. More fully stated, the doctrine is this.

> The basic presumption is that capacity to marry is governed by the law of the husband's domicil at the time of the marriage, for normally it is in the country of that domicil that the parties intend to establish their permanent home. This presumption, however, is rebutted if it can be inferred that the parties at the time of the marriage intended to establish their home in a certain country and that they did in fact establish it there within a reasonable time.

Lex loci celebrationis cannot be disregarded

It is true that lex loci celebrationis cannot always be disregarded. An English registrar, for instance, cannot be required to sanction a marriage if it would be void for incapacity be English law. But once a marriage has in fact been solemnized, whether in England or elsewhere, no other matter than its formal validity is referable to the lex loci celebrationis. ...

Cheshire's Private International Law
by G.C.Cheshire, London 1965
pp. 263-278

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CONSTITUTIONAL LAW

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CONSTITUTION OF THE SOCIALIST REPUBLIC OF ROMANIA

I

Article 5. The national economy of Romania is a socialist economy, based on the socialist ownership of the means of production.

In the Socialist Republic of Romania, man's exploitation by man has been abolished for ever and the socialist principle of distribution according to the quantity and quality of work is implemented.

Work is a duty of honour for each citizen of the country.

Article 6. Socialist ownership of the means of production is either state property - goods belonging to the whole people, or co-operative property - goods belonging to each co-operative organization.

Article 7. The wealth of the subsoil, whatever its nature, the mines, the state land, the forests, waters, sources of natural power, the factories and mills, the banks, the state farms, the machine-and-tractor stations, the means of communication, the state means of transport and telecommunication, the state buildings and dwellings, the material basis of state socio-cultural institutions belong to the whole people and are state property.

Article 8. Foreign trade is a state monopoly.

Article 9. The land of the agricultural production co-operatives, the animals, implements, installations and buildings belong-

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ing to them are co-operative property.

The plot of land which according to the rules of the agricultural production co-operatives is being used by the family household of the co-operative farmers, is co-operative property.

The dwelling and the ancillary farm buildings, the land on which they stand and, according to the rules of the agricultural production co-operatives, the production livestock and small agricultural dead stock are the personal property of the co-operative farmers.

The tools, machines, installations and constructions of the handicraft co-operatives and of the consumer co-operatives are co-operative property.

Article 10. The agricultural production co-operatives, a socialist form of agricultural organization, secure the conditions for the intensive cultivation of the land and the application of advanced science and contribute, by increasing output, to the development of the national economy, to the continuous raising of the living standard of the peasantry and of the whole people.

The state gives support to the agricultural production co-operatives and protects their property. The state also gives support to the other co-operative organizations and protects their property.

C h a p t e r II

THE FUNDAMENTAL RIGHTS AND DUTIES OF THE CITIZENS

Article 17. The citizens of the Socialist Republic of Romania, irrespective of nationality, race, sex or religion, have equal rights in all fields of economic, political, juridical, social and cultural life.

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The state guarantees the equal rights of the citizens. No restriction of these rights and no difference in their exercise on the grounds of nationality, race, sex or religion are permitted.

Any expression aiming to establish such restrictions, nationalist-chauvinist propaganda, the fanning of racial or national hatred are punished by the law.

Article 18. In the Socialist Republic of Romania, the citizens have the right to work. Each citizen is given the possibility to carry on, according to his training, an activity in the economic, administrative, social or cultural field and is remunerated according to its quantity and quality. For equal work there is equal pay.

The law establishes the measures for the protection and safety of labour as well as special measures for the protection of the work of women and young people.

Article 19. The citizens of the Socialist Republic of Romania have the right to leisure.

The right to leisure is guaranteed to those who work by the establishment of the maximum duration of the working day at eight hours, of weekly rest and of annual paid holidays.

In the sectors of arduous and very arduous work, the working day is reduced to less than eight hours, without any reduction in pay.

Article 20. The citizens of the Socialist Republic of Romania have the right to material security in case of old age, sickness or incapacity to work.

The right to material security is implemented for factory and office workers through pensions and sickness benefits paid by the

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state social insurance system, and for the members of the co-operative organizations or of other public organizations through the forms of insurance organized by these organizations. The state ensures medical assistance through its health units.

Paid maternity leave is guaranteed.

Article 21. The citizens of the Socialist Republic of Romania have the right to education.

The right to education is ensured by compulsory general education, by the fact that education at all levels is free and by the system of state scholarships.

Education in the Socialist Republic of Romania is state education.

Article 22. In the Socialist Republic of Romania the co-inhabiting nationalities are ensured the free utilization of their native language as well as books, papers, magazines, theatres and education at all levels in their own language. In districts also inhabited by a population of non-Rumanian nationality, all the bodies and institutions use the language of the respective nationality in speech and in writing and appoint officials from its ranks or from the ranks of other citizens who know the language and way of life of the local population.

Article 23. In the Socialist Republic of Romania women have equal rights with men.

The state protects marriage and the family and defends the interests of mother and child.

Article 24. The Socialist Republic of Romania ensures to young people the conditions required for the development of their physical and intellectual aptitudes.

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Article 25. The citizens of the Socialist Republic of Romania have the right to elect and to be elected to the Grand National Assembly and the People's Councils.

The vote is universal, equal, direct and secret. All citizens who have reached the age of 18 years have the right to vote.

Citizens with the right to vote who have reached the age of 23 years can be elected as deputies to the Grand National Assembly and to the People's Councils.

The right to nominate candidates is ensured to all organizations of the working people: the organizations of the Romanian Communist Party, the trade unions, the co-operatives, the youth and women's organizations, the cultural associations and other mass and public organizations.

The electors have the right to recall their deputy at any time, according to the same procedure under which he has been nominated and elected.

Mentally alienated and deficient people have no right to elect and to be elected, also persons deprived of these rights during the period laid down by a court of law in its sentence.

Article 26. The most advanced and conscious citizens from the ranks of the workers, peasants, intellectuals and other categories of working people unite in the Romanian Communist Party, the highest form of organization of the working class, its vanguard detachment.

The Romanian Communist Party expresses and loyally serves the aspirations and vital interests of the people, implements the role of leader in all the fields of socialist construction, and directs the activity of the mass and public organizations and of the state bodies.

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CLASSIFICATION OF CONSTITUTIONS

(1) Written and unwritten

All countries except Britain have a document which can be referred to as "the Constitution" - a specifically enacted set of rules providing for the government.

Written constitutions usually contain three kinds of provisions. Their principal object is to describe the main political institutions, the powers they possess, and their relationship with each other. Thus the 1949 Constitution of India, provided, among other matters, for an elected President, a Federal Legislature comprising a House of the People and a Council of States, and for Governors and Legislatures in twenty-eight states. The matters over which each body had authority were laid down in three lists - a Union list, a state list, and a concurrent list, which contained the subjects within the province of both the Union and state legislatures. ...

Finally, a constitution may include a general statement on basic attitudes. The South African constitution, for instance, begins with the words, "The people of the Union acknowledge the sovereignty and guidance of Almighty God[1] ... While such an expression of belief provides an impressive opening, it serves little practical purpose.

Why have countries found it necessary to draw up these special instruments of government? Three reasons can be advanced. First,

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1. Almighty God = dumnezeu atotputernicul.

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they are needed when nations make a fresh start with their institutions[1], as when India, Pakistan... etc. gained their independence after World War II. Secondly, the country may contain groups of people distinct from each other through race, religion or language. In order to incorporate all people within the nation,each group must be given some guarantee that its identity will be maintained. Thirdly, in large countries, people in different parts may have particular interests and needs which they feel cannot be adequately provided for by a government in a remote capital. Here some form of federalism is likely, the division of powers between federal and state authorities being laid down in a written constitution.

None of these considerations applies to Britain. For nearly 900 years, no invasion of her borders has interrupted the slow evolution of her political institutions. Only once, during the Commonwealth period, was there a complete break with the past, Cromwell's Instrument of Government being Britain's nearest approach to a written constitution. Moreover, Britain has a relatively homogeneous population. ... Finally, Britain is a small country. From the earliest times the King's writ could cover the whole realm and in most parts people sensed some contact with the government at Westminster.

Hence, when the British speak of their constitution, they are using the word in a wider sense than other peoples to refer generally to the legal and non-legal rules which regulate their government. The British approach has been purely empirical and no attempt has been made to gather together the most fundamental

1. ... when nations make a fresh start with their institutions = ..cînd naţiunile respective îşi înfiinţează primele lor instituţii proprii...

Cda. 54/974 Fasc. 4

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constitutional laws. Indeed, an unwritten constitution is generally regarded as being advantageous, as the French writer, Emile Boutmy, recognized.

> "By this means only," he says, "can you preserve the happy incoherences, the useful incongruities, the protecting contradictions..."

(quoted by J.A.R. Marriot: English Political Institutions).

The difference between the unwritten constitution of Britain and the constitution of other countries should not, however, be exaggerated. In the first place, no single document could describe all the rules and principles which determine how the country is governed without running to the length[1] of an encyclopaedia and becoming too involved for the ordinary citizen to understand. Written constitutions are, in fact, only a few pages long, and all have to be supplemented by many other rules. Secondly, many of the basic principles and rules of the British constitution are written down, though not in a single document. They are to be found in statutes, juridical decisions, and the utterances of politicians and

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1. ... without running to the length... = ... fără a ajunge la dimensiunile ...

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constitutional lawyers. It is therefore more accurate to say that Britain has "no written constitution" than to say she has an unwritten one.

(3) Federal and Unitary

Unlike a unitary constitution, in which sovereign power is vested in a single legislative body, a federal constitution distributes the ordinary powers of sovereignty among different bodies, each co-ordinate with and independent of the others. Such bodies are usually the legislature of the federal government and the legislatures of the individual states. A federation must be a definite organ of government, not simply a form of co-operation between separate governments, as in the British Commonwealth, or merely a permanent conference, as with the United Nations.It entails a definite sacrifice of some sovereignty by the participating states to the federal authority, although they retain their own legislature and governments for certain matters. Thus, while in a unitary constitution the legislature may delegate some of its law-making authority and sanction other bodies for local government, states in a federation retain their separate identities but renounce powers which were once their own in favour of the federal body.

(4) Presidential and Parliamentary

Where the executive is co-ordinate in power with the legislature, the constitution is presidential. In the United States, for instance, the President is elected separately and has his own particular authority. Where, however, the executive is subordinate to the legislature, the constitution is classified as parliamentary.

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... In Britain, where the constitution is parliamentary, although the Civil War was fought to decide the supremacy of Parliament, the practice of having a Prime Minister and Cabinet drawn from an elected chamber and responsible to it depends mainly upon convention. Moreover, the growing importance today of the Prime Minister's position has made such observers as Professor Max Beloff and Lord Boothby assert that we are moving towards a presidential form of government. This is particularly noticeable in foreign affairs. The tendency of other leading powers, especially the U.S.S.R. the U.S.A. and France, is now to work through their heads of government when discussing important issues, and the British Prime Minister has had to reciprocate. Hence, the appointment in 1960 of a peer, Lord Home, as Foreign Secretary appeared to many as a break with convention, and an indication that ministers are becoming increasingly responsible to the Prime Minister at the expense of the elected chamber.

The British Constitution
by J.Harvey, B.Sc.(Econ.) and
L.Bather, B.A., Ph.D.
London 1964

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C O U R T S

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CIVIL COURTS

The civil courts with which we are concerned are the High Court and the County Courts, with the Court of Appeal and House of Lords as the final appeal courts; the civil jurisdiction of the magistrates must also be considered. This is how the civil courts are arranged:

COUNTY COURTS. These courts were originally intended, when they were founded in 1846, to be local courts for dealing with small matters by a simple procedure and at little expense. Their jurisdiction has, however, increased until they can try most cases in which the claim does not exceed £ 200, and they administer laws which are as complicated as any of the statute book.

The court consists of a judge and a registrar. The registrar is a solicitor and amongst other duties he has the task of hearing the minor cases himself.

Most of the petty civil disputes of daily life go to the County Court if they go to court at all. The customer who does not pay his bills, the laundry which will not pay compensation for the clothes which it has lost or torn, the tenant who gets in arrears with his rent are all liable to be served with a County Court Summons inviting them to send in their defence and to attend the hearing of the case in a few weeks' time...

MAGISTRATES' COURTS. Some very important civil business falls within the province of magistrates. The orders which they can

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make in domestic proceedings include the separation of husbands and wives, maintenance of wives and children, and the custody of children. Although these orders are generally described as separation orders it is in fact comparatively rare for the separation clause to be inserted except when a wife needs to be protected from her husband.

Separation does not enable the parties to re-marry and separation for three years is not, as is popularly believed, the same thing as desertion for three years, which is a ground for divorce. Magistrates also have jurisdiction in affiliation or bastardy proceedings when they can order the father of an illegitimate child to pay the mother up to £ 1 a week.

Another of the miscellaneous civil powers which the magistrates have is to order an occupier to give up possession of premises with a rent of not more than £ 20 a year.

The Juvenile Courts, too, deal with other matters beside the trial of criminal offences by children and young persons. A person under seventeen may be brought before these courts by his parents or guardians on the ground that he is out of their control. In other cases the children are brought before the Juvenile Courts as being in need of care and protection either because they have no parents or guardians or because they are not being properly looked after. The Juvenile Courts also have the power (which they share with the High Court and the County Courts) of making adoption orders.

Appeals from the magistrates in civil cases are usually made in the same way as in criminal matters, that is to say, to Quarter Sessions or, on a point of law, to the High Court. In domestic proceedings, however, the only appeal is to the Divorce of the High Court.

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THE HIGH COURT. For convenience the business of the High Court is assigned to one of three divisions: Chancery, King's Bench, or Probate, Divorce and Admiralty.

The Chancery Division deals with the administration of estates, partnerships, guardianship of infants, trusts, mortgages and transactions with houses and lands.

The King's Bench Division deals with most contracts and torts. Torts are civil wrongs such as libel and slander, false imprisonment, assault, and the wide range of actions which come under the headings of negligence and nuisance. Contract covers not only large scale commercial transactions but also the every day sales and purchases of goods which we all make and the more sensational, but less common, breach of promise of marriage.

Probate, Divorce and Admiralty are three separate subjects with no apparent connection which happen to come unde the same division. Probate is concerned with wills, or the absence of them, i.e., intestacies. Divorce refers also to nullity proceedings, in which the court is asked to make a decree that no marriage has ever existed, as opposed to a decree dissolving the marriage,and to judicial separations. The letter can be obtained from the Magistrate's Courts, but as the courts can only order an allowance of up to two pounds a week and ten shillings for each child, a person who expects more than this brings proceedings in the Divorce Division of the High Court. Admiralty work is concerned with disputes arising out of such matters as the collision, salvage and ownership of ships.

THE COURT OF APPEAL. This court consists of selected judges three of whom sit, or if the parties agree, two, for the purpose of hearing appeals from the High Court and County Courts. The

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Court of Appeal can be overruled only by the House of Lords.

The possibility of an appeal is a point which has to be taken into account when starting an action, for the other party, even if defeated in a lower court, may go to the Court of Appeal and, conceivably, to the House of Lords. The plaintiff may be successful in the first two courts but lose his case in the House of Lords.

How The Courts Work
(published for the National Council of Social Service by Sir Isaac Pitman and Sons Ltd.)
London, pp.16-21.

ASSISE or ASSIXE (fr.assideo, Lat.to sit together, whence assire, O.Fr. to set, assis, set, seated, sealed), a jury who sit together for the purpose of trying a cause, or rather a court of jurisdiction which summons a jury by a commission of assize to take the assizes.Hence the judicial assemblies held by the Queen's commission in every county as well to take indictments as to try causes at Nisi Prius[1], are commonly termed the assizes. There are two commissions. (I) General, which is issued twice a year to the judges of the Superior Courts of Common Law at Westminster; two of whom are usually assigned to every circuit. ... The judges have

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1. Nisi Prius = expresie în dreptul comun, care şi-a avut originea în trecerea judecării de la curtea căreia îi era prezentată pricina la curtea comitatului respectiv, în baza principiilor Magnei Charta,trimiţîndu-se judecători la curţile respective pentru judecarea pricinilor, practică ce a fost apoi extinsă la alte tipuri de judecată.

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four several commissions: (1) Of oyer and terminer[1], directed to them and many other gentlemen of the county, by which they are empowered to try treasons, felonies, etc. This is the largest commission. (2) Of gaol delivery[2], directed to the judges and the clerk of assize associate, empowering them to try every prisoner in the gaol committee for any offence whatsoever, so as to clear the prisons. (3) Of Nisi Prius, directed to the judges, the clerks of assize and others, by which civil causes, in which issue has been joined in any one of the Superior Courts, are tried on circuit by a jury of twelve men of the county in which the venue is laid. ... (4) A commission of the peace, by which all justices are bound to[3] be present at their county assizes, besides the sheriffs, to give attendence to the judges, or else suffer a fine. There used to be another commission, that of assise, directed to the judges and clerk of assise, to take assises and do the right upon writs of assise brought before them, by such as were wrongfully thrust out of their possessions. These writs are abolished, and recourse is had to an action of ejectment, tried to Nisi Prius. (II) The other division of commissions is special, garanted to certain judges to try certain causes and crimes.

Whalton's Law Lexicon
London,1872,pp.91-92

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1. oyer and terminer = tribunale care funcţionează în faţa reprezentanţilor reginei, printre care de obicei se află doi judecători de la curţile superioare din Westminster şi care se ţin de două ori în fiecare an în fiecare comitat din regat, cu excepţia metropolei şi zonelor învecinate.

2. gaol delivery = împuternicire dată judecătorilor de a judeca şi rezolva cazul fiecărui întemniţat la sosirea în oraşul de judecată.

3. ... all justices are bound to..= toţi judecătorii sînt obligaţi să...

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C I V I L L A W

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ON HISTORICAL CONDITIONS OF THE JAPANESE CIVIL CODIFICATION

Kaisaku Kumagai[x)]

II. The Conditions of the Japanese Civil Codification.

It is very questionable whether there were institutions of property in the Edo era. At least, buying and selling of farming land had been prohibited by the Tokugaza Shôgunate since 1643 and some kinds of cultivation (tobacco, medicinal herbs, mulberry, etc.) had been limited since 1643, and also division of land ownership had been prohibited since 1673. But, in fact, there were many small owners who were surrounded by other owners of the same status on one side, and there were many farmers who sold their lands and cultivated tobacco, herbs and mulberry on the other side. And, the economic conditions had been approaching to capitalist production at the end of the Edo era; and it was under such circumstances that the Meiji Restoration had been achieved. The Meiji Government began to compile the Civil Code, the Criminal Code, the Procedure Code, etc., but about thirty years were necessary to compile them. First of all, here is the chronicle of civil codification.

1886-7 (Meiji 19-20) - The Draft Jurisdictional Convention.
The Investigation Committee of Codificatior in the Foreign Ministry.

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x) Professor of Japanese Legal History, Osaka University

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The Investigation Committee moved to the Judicial Ministry.

1890 (Meiji 23) - The Civil Code was promulgated (reception of the French Code).

1890-2 - The Controversy on the Civil Code.

1892 - The Civil Code of 1890 became void.

1893 - The New Committee of Codification.

1896-8 - The New Civil Code was promulgated (systematized according to the pandect system)[1].

1898 (Meiji 31) - The New Civil Code came into force.

In General

1) About Some Acts After the Meiji Restoration

It may be said that the right of ownership had already existed in the Edo era, in facto. But, in jure, the first institution was the Act of 1868 which guaranteed farmers ownership of land, and after it the Act of Free Cultivation (1871) and the Act of Remove Embargo on Buying and Selling of Land (1872)had followed. And, in 1872, the Act of Register of Land was proclaimed. A series of these acts were useful for new appropriations upon a large scale. The rate of increase of Kosaki-chi (tenancy land) since 1872 is the following:

	Change of the rate of Kosaku-chi per whole cultivated acreage.(%)
1872	30.63
1873	31.10
1883	36.75
1887	39.34

1. the pandect system = protecţie (cod complet de legi).

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Thus, the old microcosm of previous owners began to be appropriated by somebody, and new appropriators had demanded new institutions subject to more reliable and swift contract. But those acts had not been systematized, yet. In order to systematize those acts to a code, the western powers were deeply influential. The western powers had already thought Japan as a profitable market.

2) There were unequal treaties between Japan and the western strong powers since 1858, which contained the consular jurisdiction of powers and denied Japanese tariff autonomy; the Japanese codification began with the revision of such old treaties. When the Japanese Government demanded the revision of the treaties, the western powers required Japan to have modern codes in accordance with western principles. The Japanese Government met their demands, and after several congresses. ...

The Draft Jurisdictional Convention was agreed upon by the Conference of 22 April, 1887 in Tokyo. Among signers, there were Shuso Aoki (the Vice-Minister of Foreign Affairs of Japan) and 15 representatives of the following countries: France, Austria, Great Britain, Italy, Belgium, the U.S.A., Germany, Holland, Sweden,Norway, Denmark, Spain, Portugal, Russia and Switzerland. This draft began with such articles as: "The Imperial Government of Japan undertakes to open completely and for ever the Empire to foreigners within two years after the exchange of the ratifications of the present Convention", and as: "The Imperial Government of Japan undertakes to grant to foreigners, in conformity with the general principles of international law, all the rights and privileges enjoyed by subjects of His Majesty The Emperor of Japan" (&2).

The 4th Article establishes the Japanese judicial organization and its codification.

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"The Imperial Japanese Government undertakes to establish, in accordance with Western Principles, and with the stipulations of the present Convention, the judicial organization of the Empire and the codifications hereafter specified, namely:

1. Criminal Code;
2. Code of Criminal Procedure;
3. Civil Code;
4. Commercial Code (including bankruptcy laws and laws relating to shipping and bills of exchange);
5. Code of Civil Procedure (including the procedure to be followed in commercial matters).

Moreover, the Police Laws and Regulations actually in force shall be, as far as possible, collected and classified." Still more, the content of the 5th Article was as follows: "The Imperial Japanese Government will promulgate the laws and regulations enumerated in the preceding Article within the time fixed by Article I; and undertakes to communicate to the (foreign) Government their authentic text, in English, not later than eight months before the time fixed in Article I, namely, within sixteen months after the exchange of the ratifications of the present Convention. In the same manner the Imperial Japanese Government undertakes to bring to the knowledge of the (foreign) Government all alterations intended in these laws eight months before the said alterations come into force."

This draft did not become a treaty. But its contents deeply influenced the process of Japanese codification. In the same year (1887), the Investigation Committee of Codification had been established in the Foreign Ministry. After that the Committee moved to the Judicial Ministry, but the influence of the draft remained.

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The western countries had persistently demanded Japanese codification in accordance with western principles for the revision of old treaties, and the Civil Code was promulgated in 1890/91, and the Commercial Code in 1890. G.Boissonade contributed to the compilation of the former especially of the property and contract laws and H.Roesler to the compilation of the latter.

The Civil Code of 1890-91 was compiled on the basis of the French Civil Code. But this code was resisted in 1890 and resistance continued till 1892. The opponents of the code relied on traditional thoughts and they demanded the maintenance of the "Iye" (Japanese family) institution. They, however, could not prevent codification. In 1893 the New Committee of Codification was established, which adopted the system of the German Civil Code (B.G.B.) and added to it the Japanese family institutions. In the end, the new Civil Code was promulgated in 1896 and in 1898, and was inforced in 1898. This Civil Code was based on the pandect system, namely - Book I General Provisions, Book II Real Rights, Book III Obligations, Book IV Family, Book V Succession. Of those, provisions of Books I, II, III are in force now; those of Books IV, V were abolished in 1947 and new provisions are in force.

This Civil Code stipulated that a wife was a quasi-incompetent person and inferior to a husband. But this was not curious. Even in the western civil codes, it is easy to find such regulations on the status of a wife.

The provision of the 14th article was: This provision was struck out in December 22, 1947.

A wife must obtain the permission of her husband in order to do the following acts:

1. Those specified in Art.12, No.1-6.

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2. To accept or refuse a gift or a legacy.

3. To make any contract affecting her person.

Any act contrary to those provisions may be rescinded.

We can easily find similar provisions to this in western civil codes. Namely, Art.215-217 of the French Civil Code, Art.134 I of the Italian Civil Code and Art.1358 I of the German Civil Code.

These provisions, however, are not contradictory to the economic development. Because the incapacity of a wife did not disturb the economic development from simple commodity production to capitalist production. It is rather important to specify: - who is capable? who is incapable? - for reliable and swift activity. Thus, a comprehensive and systematic code was accomplished involving the provisions of a wife's incapacity and so on.

The speciality of the Japanese Civil Code had not been in this, but in the "Iye" institution, first of all.

2. IN PARTICULAR

1) "Iye" (Family) Institution

A wife is subject to a husband. Such a situation of a wife is never curious in the modern world. But in Japan, a wife was not only subject to a husband but to the chief of the husband's family. The rights and duties of the chief were inherited by a different method from a property succession - typically <u>agnatio</u> institution.

This institution of family had been in force since 1898. In the process of the compilation of the new civil code, through the controversy of 1890-92, the provisions of "Iye" promoted from chapter 13 to chapter 2 in Book IV. I take the most typical provisions:

- Art.746.- The chief and the members of a family bear the name of the family.

- Art.747.- The chief of a family is bound to support its members.

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- Art.749 I.- A member of a family may not choose his residence against the will of the chief of the family.

- Art.750 I.- If a member of a family desires to marry or enter into a relation of adoption, he must obtain the consent of the chief of his family.

- Art.788.- By marriage the wife enters the family of her husband.

A man who marries a woman who is the chief of a family, enters the family of his wife. (from Chapter III).

Then, I must ask the reason why the "Iye" institution was necessary for Japan. In short, Japanese capitalism had commenced later than in the western countries and to overtake them, the Japanese Government had to help many enterprises financially and to establish Japanese military industries, so there was no preoccupation with what happened to the people during the process of accumulation of the capital. "Iye" fitted into this general picture.

2) Some Complementary Institutions of the Property Ownership

The codification of the Japanese Civil Code had not been received warmly in many districts where people had not become familiar with it. For example, the institutions of the property ownership were opposed by many people who were familiar with the cooperative use of land. So some provisions about it were set up in the civil code. I quote some examples from Book II Real Rights:

- Art.214.- The owner of a land must not obstruct the natural flow of water from an adjoining land.

On emphyteusis

- Art.270.- An emphyteute has a right to carry on agriculture or cattle raising on the land of another or payment of a rent.

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On iriari kens (a right held by a whole village to take wood or grass from a certain land).

- Art.263.- As to an iriari-ken which has the nature of co-ownership the provisions of this Section apply in addition to the customs of the particular district.

- Art.294.- As to an iriari-ken not having the nature of co-ownership the custom of each locality is to govern; also the provisions of this Chapter apply correspondingly.

This, however, does not mean that such institutions deny the ownership. On the contrary, those work as the complementary institutions of the property ownership. Leaving those institutions of cooperative use and suppressing complaints of farmers, the institutions of property ownership have developed as a method of capitalist production in Japan.

"Osaka Law Review"
No.15, 1967
pp.4-10

A CIVIL ACTION

When a person is confronted with a legal difficulty his first step is usually to consult his solicitor. It is very common to be asked what is the difference between a solicitor, a barrister and a lawyer. Lawyer is easily explained. It is a general term which covers all members of the legal profession, whether they be judges, barristers or solicitors. The division of the legal profession into barristers and solicitors is not easy. The solicitor is one who has direct dealings with the client. He usually sets out to be a

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general practitioner, either alone or in partnership with other solicitors, and handles conveyancing (wills, leases, transfers of property and so on), administration of estates and general business matters, as well as litigation. He has the right to conduct cases in the County and Magistrates' Courts, and frequently does so, but may not speak for his client in the High Court. The barrister or counsel is the only one who can conduct a case in the higher courts. He is the specialist on the actual conduct of cases, and, very often, on some particular branch of the law. He cannot take up a case direct from a client but he is instructed by the solicitor when the most expert assistance is needed. It is from amongst the successful members of the bar, usually King's Council or silks (from the material of the gowns which they alone are entitled to wear), that the judges are chosen. There is a rigid division between the Bar and the solicitors' branch of the profession, which in many countries does not exist, and which has been strongly criticized from time to time as causing duplication of work and consequently increased expense.

To return to the solicitor who has been consulted by his client. A non-contentious matter, such as the transfer of a house, is dealt with in the solicitor's office. If the client is being prosecuted for a crime, arrangements are made for the preparation and conduct of the defence. If it is a civil dispute, negociations are entered into with the opposing party with a view to settling the matter out of court, and if the case is a clear one and both the parties are reasonable, a settlement will probably be reached. It is important to remember that most sound claims are settled satisfactorily in this way, and that the success of the legal system cannot be judget solely by the benefits obtained in cases where

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court proceedings have to be commenced. There are some types of proceedings, of course, which cannot be settled by arrangements between the parties; for example, criminal and divorce proceedings, where the outcome of the cases concerns the State as well as the parties concerned.

If in a civil case a settlement cannot be reached, the solicitor has to consider many questions when advising his client whether or not to take the case to court. In addition to weighing the chances of success he has to consider the amount of damages likely to be awarded, whether the defendant will be able to pay the damages, the cost of the case, and the trouble and loss of time, and possibly reputation, which may be caused to his client. Even if he decides that for one of these reasons a full-blown action would not be worth while he may still advise that a writ or summons should be issued, with the idea of showing determination to fight. This is perfectly permisible. Many actions are begun which never get as far as a court hearing, and the answer to the question "Can he summons me?" is that anyone has the right to take proceedings against you whether he has a good claim or not,but if the action is groundless, frivolous or vexatious it can be dismissed before it gets very far. Such things as "legal blackmail" does occur, but the abuse is largely checked by the consideration of the costs which will be payable.

The solicitor, possibly with the help of counsel, prepares the appropriate documents for starting proceedings in this particular type of case, that is to say a writ, summons or petition. His clerk takes the document, with the necessary number of copies, to the court offices and pays the court fee. The court now has a record of the proceedings, and the official stamp is affixed to the documents.

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The next step is to give the other party notice[1] of the proceedings which have been commenced against him, by serving him with a copy of the writ, summons or petition, and this usually means service on the other party personally or on his solicitors. It is most unlikely that a person will be divorced, for instance, or have any other judgement given against him, without receiving notice that the proceedings are being taken.

It now falls on the other party (the defendant or respondent) to indicate his intention of defending the action, so that judgement may not be given against him without his having a chance of being heard. This he does, if it is a High Court action, by entering an appearance - which consists of filing a suitable document at the court offices - but if it is a County Court action, he goes straight on to the next step, which is to file a defence, setting out his reasons for opposing the claim. Needless to say[2] there are often more complications than this in a difficult case. In some types of action the statement of claim, instead of being included in the writ or summons, has to be filed separately after the defendant has entered an appearance. Further particulars of the claim or defence may be called for, and it may be desirable to require the other party to declare what documents he has regarding the subject matter of the dispute and to inspect them so that you may know what evidence is likely to be given at the trial. It may be necessary to issue subpoenas to witnesses to make them attend the hearing and produce documents which are needed in the case, and

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1. ... to give to the other party notice ... = ... de a înştiinţa oficial cealaltă parte...

2. ... needless to say = ... nu e necesar să menţionăm.

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such matters as the place and mode of trial have to be decided. In the High Court these preliminary proceedings, known as interlocutory proceedings, take place before officers of the court called Masters or Registrars, and the applications are heard in an atmosphere of speed and apparent confusion which has given the ante room to the Master's Chambers in London the name of "The Bear Garden".

It only remains to brief counsel. The solicitor, from his experience, selects a barrister who is suitable for the job, arranges with the barrister's clerk what fee is to be paid and prepares the brief, which is an account of the matters involved in the case. The brief together with witnesses' statements and other documents, will provide the barrister with all the information he needs in order to conduct the case. If no date has been fixed for the trial of the action, it is now a question of watching the court lists until previous cases have been disposed of, and having everything in readiness for[1] the day when the case is to be heard.

TRIAL. The climax of the case comes with the trial and this is, of course, the part of legal proceedings with which members of the public are most familiar. There is, however, very little understanding of the underlying plan of the procedure that is followed in court. There are variations in the procedure according to the type of case and other circumstances but, although the following description refers to a common type of defended civil action in the High Court, for example, a road accident claim, the outline is similar for other civil cases and other courts.

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1. having everything in readiness for... = avînd totul pregătit pentru ....

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Let us assume that the parties are represented by counsel. It is the right of any party to conduct his case himself, but except in the simplest cases he will be at a disadvantage if he does so.

The case is usually introduced by a few remarks from the plaintiff's counsel describing the dispute and the fact which he proposes to prove. It is then up to him to[1] produce the proof of whatever facts are necessary to establish his case. It is not sufficient for the plaintiff (the injured person and the person who commenced the proceedings) to say, "I cannot prove that the defendant was negligent but neither can he prove that he was not"; the person who has been injured must prove his case, otherwise he cannot succeed.

The best evidence which is available must be produced, that is to say usually witnesses must attend and give their evidence verbally. Written statements will not be accepted. Many accident cases have to be abandoned because witnesses are reluctant to be drawn into a case and will not come forward. Counsel calls the witnesses who are favourable to his case and obtains their account of what occurred by asking them questions, but he may not put leading questions which suggest a particular answer. After each witness has thus been examined, counsel for the defendant cross-examines him in an endeavour to show the weaknesses or inaccuracies of his evidence. In cross-examination leading questions may be put, but if any fresh matters are raised by the cross-examination the first counsel is entitled to re-examine the witness.

When all the witnesses for the plaintiff have given their

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1. It is then up to him to... = apoi lui îi revine...

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evidence, counsel for the defendant, if he cannot convince the judge that no case has been established by the plaintiff, calls the witnesses for the defendant and tries to disprove the plaintiff's allegations. Counsel for the plaintiff has the chance of cross-examining the witnesses. After all the evidence on behalf of the defendant has been given, the defendant's counsel makes a speech arguing why, on the law and the facts, judgement should be given in the defendant's favour, and the plaintiff's counsel replies with all the arguments for the plaintiff's case.

It is now for the court to give its decision. If there is a jury, it is for them to say what they consider to be the facts of the case, and the judge lays down what is the law and applies it to the facts. Jury trial is very rare nowadays except in criminal cases before Assizes or Quarter Sessions. The judgement is recorded and unless there is an appeal the case cannot be re-opened.

ENFORCEMENT. The matter does not necessarily end there, however, for the judgement will be useless unless it is carried out, and it may be necessary to invoke the aid of the court again for this purpose. If the judgement is for the payment of money there are several ways of obtaining satisfaction from the property of the debtor, the most common being to levy exaction on his goods. During the emergency caused by the war the leave of the court must be obtained to do this. Alternatively it is possible to obtain an order committing the debtor to prison if you can show that he has the means to satisfy the judgement. This may be difficult to show, but it is a necessary requirement since imprisonment for debt, meaning imprisonment of a man merely because he is too poor to pay a debt, has been abolished.

How the Courts Work
(published for the National Council of Social Service, by Sir Isaac Pitman and Sons Ltd), London, pp.6-11

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TAXATION: FEDERAL COURTS NOT BOUND BY STATE TRIAL COURT'S DETERMINATION OF TAXPAYER'S PROPERTY INTEREST

The executor of decedent's estate claimed a marital deduction for the value of a trust, asserting that the surviving spouse possessed a general power of appointment over the corpus[a]. The Commissioner disallowed the claim on the ground that a release of the power executed prior to decedent's death was effective. While the action was pending in the Tax Court, a proceeding to determine the validity of the purported release was initiated in a state court. The state court held that the release of a contingent power was void and therefore decedent's wife retained her general power of appointment[b]. The Tax Court accepted the holding as an authoritative exposition of state law and allowed the deduction.

In a second case, the executor of an estate had applied the state proration statute[c] permitting the use of the marital deduction to determine the taxable estate. The application of the statute substantially reduced the size of the taxable estate, and

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a) In order for the trust to qualify for the marital deduction the surviving spouse must possess a general power of appointment over that portion of the trust from which she receives income.

b) Of the twenty-two interested parties notified, only three filed briefs, all arguing the release to be void.

c) The statute provides that both state and federal death taxes shall be equitably distributed among the persons interested in the estate unless the testator directs otherwise. However, in making this proration among the interested persons, any exemptions granted by the Act imposing the tax will be allowed first in order to determine the size of the taxable estate.

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was disallowed by the Commissioner. The executor sought a determination from a state court as to whether the proration statute should be applied. The court held that state law required the application of the proration statute to decedent's estate. On appeal, the state property decision was denied binding effect.

The Supreme Court joined the cases because of the common issue and held that where a federal estate tax is imposed on a state defined property interest, the state trial court's determination of that interest is not binding on federal authorities. Commissioner v.Bosch, 387 U.S.456 (1967).

Subject to several exceptions[d], the federal estate tax is imposed on property interests as defined by the common law of the individual states. However, the federal courts have been in conflict as to whether the determination of a taxpayer's property interests by a lower state court is an authoritative declaration of state law binding on federal tax authorities.

The Supreme Court first considered the question in Freuler v. Helvering, in which it held a state probate court decree ordering an income beneficiary of a trust to repay an improperly distributed share of the trust earnings conclusive on a federal court for purposes of tax assessment. In so holding the Court denied the Com-

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d) See Gallagher v.Smith, 233 F.2d 218 (3d Cir.1955); Braverman & Gerson, The Conclusiveness of State Court Decrees in Federal Tax Litigations, 17 Tax L. Rev.545 (1962). Braverman and Gerson outline three categories in which state court decrees enter into federal taxation litigation: (1) a state decision on an issue ancillary to the tax question but not involving a determination of the taxpayer's property interest upon which the federal tax is imposed; (2) a decree rendered in an area where the federal tax statute has established the criterion of taxation; (3) a state decree determining the taxpayer's property interests on which the federal tax is to be imposed. The first two types of state court decrees have no effect upon a federal court in a subsequent proceeding;the scope of this Comment is limited to the third type.

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missioner's contention that the state proceeding was collusive[e] and, therefore, not a valid declaration of state law binding on the federal court. The decision has been cited for establishing the principle that unless a state proceeding is found to be collusive, it is binding on federal authorities. The Freuler approach was affirmed in Blair v.Commissioner, in which the Commissioner attacked the finding of an intermediate state appellate court that the petitioner had validly assigned his right to trust income to his sons. The Supreme Court held the state court's determination to be conclusive on federal authorities, denying without extensive comment that the state proceedings were collusive[f].

Although Freuler and Blair established a "collusive-non-collusive" test for determining the effect to be given a lower state court's determination of the property rights upon which federal taxation turns, neither case set forth viable standards for the application of that test. The result has been a great deal of inconsistency among the courts as to which factors will be considered as evidence of collusion in the state proceedings and the relative weight to be given such evidence. The factor most frequently con-

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e) The Commissioner argued that the state court proceeding was collusive in the sense that the parties had joined to obtain a decision adverse to him.

> We cannot so hold... Notice was given to the interested parties. Objections to the account were presented, and the matter came on for hearing in due course, all parties being represented by counsel. The decree purports to decide issues regularly submitted and not to be in any sense a consent decree. The court ruled against the remaindermen on one point, and in their favour on another...

f) The Court in answering the Commissioner's argument that the suit was collusive recalled that the state appellate court had reviewed the lower court's decision and had reached a deliberate conclusion.

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sidered is the adversary nature of the state court proceedings. A majority of the courts have deemed a finding that the state court decision was rendered in an adversary proceeding determinative of the question of collusion, on the theory that this characteristic insures that the state decision is an accurate declaration of state law. A minority of the courts, however, have refused to consider the adversary character of the state proceeding conclusive evidence, apparently because of a notion that a strict adversary requirement may invalidate many otherwise valid decrees. The showing of actual fraud in these state proceedings is apparently necessary in order to establish collusiveness. The Tax Court has ostensibly adhered to the adversary requirement as the criterion for determining collusiveness, distinguishing on verry narrow grounds adverse decisions from the minority circuits. However, the problem is obviated by the decision of the Supreme Court in the instant case denying conclusive effect to all such lower state court determinations and rejecting the collusive-noncollusive analysis which had developed from Freuler and Blair[g].

The Court developed three separate lines of reasoning to support the holding. First, citing Freuler, it denied that the Commissioner was bound by either res judicata of collateral estoppel since, in neither case, was he a party to the state action[h]. Second, the Court relied on legislative history and the statutory language to argue that the marital deduction should be narrowly

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g) It is disconcerting that the Court distinguishes Blair on the ground that it was an appellate court decision, while Freuler a case which seems to also involve a state trial court proceeding, is cited as authority only on a collateral point.

h) However, the Commissioner had received notice of both actions.

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construed[1)], and that Congress, having foreseen the instant problem intended a state court's determination to be afforded only proper regard, not conclusiveness. From these premises, it reasoned that the legislative intent to protect the federal fisc from taxpayers who obtain favorable, but perhaps inaccurate, determinations of state law from state trial courts can best be implemented by denying conclusive effect to those state trial court decrees.

The third and critical rationale was based on an analogy with the effect to be given a state trial court's interpretation of state law in diversity cases. Under the Erie rule, a federal court sitting in a diversity case is bound by a declaration of state law only from the state's highest court. Since the underlying substantive rule involved is based on state law in both diversity and federal tax cases, the Court maintained that the same rules for determining state law ought to apply. Hence lower state court decisions are not controlling as to state law when the state's highest court has not spoken.

The Courth's holding eliminates the difficulty of articulating the collusive-noncollusive test or otherwise defining and

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1) This appears to be consistent with the general rule. However, three weeks prior to the instant decision, the Court, in Northeastern Penn.Nat'l Bank & Trust Co. v.United States, 387 U.S. 213 (1967) argued that the marital deduction should be broadly construed in holding that it was not necessary for the widow's share of trust income to be expressed in a fraction of percentage to satisfy the specific portion requirement or the statute. Furthermore, the Court supports its decision with considerations unique to the marital deduction, yet articulates, a rule of tax law to be applied beyond this provision.

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applying a formal test to each state decision to determine whether it truly reflects the law of the state[j]. More importantly, however, by permitting the federal court to weigh the trial court's declaration of state law against that of the state's highest court[k], the substance of the trial court's decision is evaluated, rather than the form of the proceeding which may or may not reflect the accuracy of the substantive decision. In addition, the decision affords the maximum amount of protection to the federal fisc[l] by providing the Commissioner an opportunity to litigate the substantive issue.

There are, however, alternative methods for protecting the federal fisc less drastic than that adopted by the Court. Rather than deny conclusive effect to all lower state court proceedings, it would seem more desirable to utilize the traditional collusive-noncollusive test to deny effect to only those proceedings which were likely to give rise to inaccurate declarations[m]. While it

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j) In addition, a formal test of collusiveness may be used as a cloak for permitting the courts to look to the accuracy of the decision, and then, depending on its approval or disapproval, labeling it collusive or noncollusive.

k) There is undoubtedly a rational connection between the quality of the decision and the level of the court. This follows from the competence of the high court judges, the number of judges hearing and deciding a question, the mechanical aids available to the high courts, and the fact that the opinion once made is published.

l) This consideration becomes particularly germane if it is assumed that the primary conflict in a distribution of property in the state court is between the Commissioner and the potential distributees.

m) This approach is advocated by the dissent, a number of commentators and courts, and counsel for the government. In addition to its desire to protect the federal fisc, the majority's apparent reason for ignoring this authority is that the uncertainty incidental to defining a "collusive" suit is dispelled.

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is true that a degree of uncertainty was involved in the former approach, some of this uncertainty could have been eliminated by a definitive explanation of whether nonadversariness was the essential element of collusion[n]. Moreover, it is arguable that while the holding may eliminate the uncertainty of the prior test, it introduces uncertainty in tax planning by requiring local attorneys to predict what the determination of local law by a foreign court will be.

Furthermore, there may be a genuine hardship to the taxpayer since the state proceeding is binding on the taxpayer as to his property interests irrespective of the decision of the federal court for federal tax purposes. If the federal court disregards the state determination and clothes the taxpayer with a greater property interest, he may be taxed for a property interest he does not possess [o]. Such inconsistent results between state and federal courts with respect to state law are likely to impair local policies and destroy uniformity in local law. This fear is particularly relevant to the area of federal taxation, because of its far-reaching impact.[p] It is unlikely that the Court anticipated such a result in defining the method of determining state law for diversity purposes.

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n) The dissent, if accepted, would eliminate the fundamental conflict between the circuits over the importance of adversariness in defining collusion.

o) For example, the state court could find that a widow had no interest in a trust created by her husband's will, the interest passing directly to the children, and the federal court making an independent determination could find that the widow had a special power of appointment which was taxable.

p) The problem is illustrative of an inherent dilemma of federalism: the desire and need for uniform application of national laws, and the often conflicting interests of legitimate local policies whose existence the system protects.

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The dissenting Justices advocated the retention of the collusive-noncollusive test, defined by the adversary nature of the proceedings, as an adequate means of protecting the respective interests of the parties.[q] Accordingly, the federal interest would be adequately protected by requiring the state proceeding to be genuinely adversary, thus insuring an accurate declaration of state law. The solution would afford a greater recognition of the legitimate interests of the taxpayer and state peculiar to the problem, and reconcile these interests with that of the federal fisc.

Although the test is a formal one, which may not be responsive to a particular fact situation, there is a rational connection between the adversary character of a proceeding and the correctness of the decision. Adversariness is a fundamental characteristic of our legal system, and is presumed to insure a fair and accurate determination of law and fact. Furthermore, there is support for the proposition that the adversary test is capable of practical application.[r] It is true that the test would require an ad hoc application of the collusive-noncollusive test thus perhaps introducing uncertainty. However, the redifinition of the test in

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q) Justice Harlan sees the state interests are: uniform application of state law, protection of the state's constitutionally defined areas of discretion, and recognition of the superior ability of state judges to declare state law. The federal interest according to Harlan is solely the fair administration of federal revenue statutes.

r) As evidenced by previous cases in which the courts have used the adversary test to evaluate the state proceeding... Also the fact that the Commissioner advocated the adversary test indicates that test is not completely impractical.

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terms of an adversary requirement would eliminate the kind of uncertainty that existed prior to the instant case.

The Court's analysis of the problem does provide an easily administered test which goes to the substance of the problem. However, in reaching its decision the Court ignored a substantial body of authority and relied on construction of a statute whose relevance to the broad issue of the effect of state trial court decisions is questionable. Furthermore, while the application of diversity principles may be appropriate, significant distinctions between that area of the law and the determination of property interests for federal tax purposes are left unexplained by the Court. The adversary requirement, advocated by the dissent and a majority of the federal courts, is surely more responsive to the demands of both the taxpayer and the state while protective of the federal fisc, despite its difficulty of definition and application.

Minnesota Law Review, vol.52,No.3
January 1968,
pp.776-784

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CRIMINAL LAW

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F O R G E R Y

Definition

The beginnings of the crime of forgery are to be found in the law relating to treason, it being held felony to fabricate the Royal seals or counterfeit the Royal coinage. This protection of Royal instruments was in early times extended to the seals of the lords of the manor, but there was apparently no crime in the falsification of private documents, however important; for these the civil remedies were held to be sufficient. It did, however, become established that it was a criminal forgery at common law to counterfeit any authentic matter of a public nature, as a warrant of attorney, a certificate of holy orders, an authority to a sheriff for the discharge of a prisoner, an authority to the governor of a gaol to discharge a prisoner, a county court summons, a letter of admission to a prison to visit a prisoner, a certificate of ordination. The Star Chamber did not hesitate, in the exercise of its arbitrary jurisdiction, to impose sanctions in numerous cases where seals and documents of a non-official character had been falsified, but it was not until the eighteenth century that it was beginning to be considered that it might be the crime of forgery to falsify writing of a private sort. East, writing in 1803,noted the scant attention paid to this crime by earlier writers,and the

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vagueness of their description of it. In his opinion doubts as to whether it was a crime to forge writings of whatever kind had been cleared away ba the decision in R.v.Ward in 1727.

Ward was prosecuted upon an indictment charging that the defendant being bound to deliver alum, of the value of £ 1,000, to B, contriving and intending to defraud B of the alum, and with fraudulent intent to avoid delivery of the said alum on, etc., upon the back of a certain certificate in writing, signed by one A.N., falsely forged and counterfeited a certain writing, in the words and figures following:

	Tons	C
	660	5
	315	5
"Schedule	975	10

"Mr.John Ward. I do hereby order you to charge the quantity of 660 tons and I quarter of alum to my account, part of the quantity here mentioned in this certificate; and out of the money arising by the sale of the alum in your hands pay to Mr. Ward and yourself £ 10 for every ton according to agreement; and for you so doing this shall be your discharge. --B-- April 30th, 1706". A second count charged that he published the same forged writing, knowing it to be forged, etc. The defendant having been convicted, it was moved, in arrest of judgment, that the instrument set forth was not the subject of forgery at common law, and the offence was not, therefore, punishable in this form, but at most punishable only as a cheat; being merely a thing of a private nature, and in effect nothing more than a letter. And it was argued that if the counterfeiting of a letter had been punishable as a forgery at common law, then it was nugatory to pass 33 Hen. 8, c. 1 (rep.), to punish those who got the money or goods of others under colour of false tokens or counterfeit letters. It was also argued that it nowhere appeared that B had been prejudiced, and

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that if B had been so prejudiced the defendant might have been indictable as for a cheat but not as for forgery at common law. But all the court held that this was indictable as a forgery at common law; that none of the books confined the offence to the particular kinds mentioned in 3 Co.Inst.169; and that as forging a writing not sealed came within all the mischief of forging a deed, the maxim applied, ubi eadem est ratio eadem est lex; that this was recognised in the preamble of 5 Eliz.1, c. 14 (rep.), which recited that the forging of writings, as well as of deeds, was punishable by law before that statute; but that offenders had been encouraged by the too great mildness of the punishments; and that the 33 Hen. 8, c. 1 (rep.), did not create new offences, but only enhanced the penalty where the fraud was executed.

The doubts that had been felt about such an extension of the common law are reflected by Hawkins for, some fifty years after the case of R.v.Ward had been decided, he wrote,

> "As to other writings of an inferior nature, it seems to have been generally laid down as a rule, that the counterfeiting of them is not properly forgery. ... But perhaps it may be reasonable to make this distinction between the counterfeiting of such writings, the forgery whereof hath already been shown to be properly punishable as forgery, and the counterfeiting of other writings of an inferior nature, that the former is in itself criminal, whether any third person be actually injured thereby or not, but that the latter is no crime, unless some one receive a prejudice from it."

It was perhaps upon Hawkins' statement that Blackstone based his well-known description of forgery as "the fraudulent making or alteration of a writing to the prejudice of another man's right."

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This lacks the precision necessary for a definition and is of no practical value; in Blackstone's day the common law of forgery was still in its infancy and had never been authoritatively delimited. Statute had from time to time made provision for specific kinds of forgery, for as the accomplishment of reading and writing spread among the masses of the people after the Revolution, increasing use was made of written documents in the transaction of business, and so the falsification of such writings for fraudulent purposes became so common as to evoke the attention of the legislature. Instead, however, of a comprehensive provision, based upon a general definition of forgery as a crime, a piecemeal course was followed; a succession of statutes were enacted, each dealing with the falsification of such carefully specified class of writings as some influential section of the business community could from time to time prevail upon Parliament to protect. By the end of the eighteenth century forgery had become an important crime which called for extensive treatment in the textbooks. East described the crime as "a false making, a making malo animo, of any written instrument, for the purpose of fraud and deceit," the word "making" in this last definition being considered as including every alteration of, or addition to, a true instrument.[x] It has also been very clearly defined as the fraudulent making of an instrument which purports to be that which it is not.

The Forgery Act, 1913 (3 & 4 Geo.5, c.27), which contains the first statutory definition of forgery, enacts:

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x) East P.C. As to the word forge, it is said in 3 Co.Inst.169, "To forge is metaphorically taken from the smith, who beateth upon his anvil, and forgeth what fashion or shape he will: the offence is called crimen falsi, and the offender falsarius; and the Latin word to forge is falsare or fabricare."

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Section 1, "(1) For the purposes of this Act, forgery is the making of a false document in order that it may be used as genuine, and in the case of the seals and dies mentioned in this Act the counterfeiting of a seal or die, and forgery with intent to defraud or deceive, as the case may be, is punishable as in this Act provided.

"(2) A document is false within the meaning of this Act if the whole or any material part thereof purports to be made by or on behalf or on account of[1] a person who did not make it nor authorise its making; or if, though made by or on behalf of or on account of the person by whom or by whose authority it purports to have been made, the time or place of making, where either is material, or, in the case of a document identified by number or mark, the number or any distinguishing mark identifying the document, is falsely stated therein; and in particular a document is false:

(a) if any material alteration, whether by addition, insertion, obliteration, erasure, removal, or otherwise, has been made therein;

(b) if the whole or some material part of it purports to be made by or on behalf of a fictitious or deceased person;

(c) if, though made in the name of an existing person, it is made by him or by his authority with the intention that it should pass as having been made by some person, real or fictitious, other than the person who authorised it.

" (3) For the purposes of this Act:

(a) It is immaterial in what language a document is expressed or in what place within or without the King's dominions it is expressed to take effect;

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1) On behalf or on account of = în numele sau în contul ...

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(b) Forgery of a document may be complete even if the document when forged is incomplete, or is not or does not purport to be such a document as would be binding or sufficient in law;

(c) The crossing on any cheque, draft on a banker, post-office money order, postal order, coupon, or other document the crossing of which is authorised or recognised by law, shall be a material part of such cheque, draft, order, coupon, or document."

By the Criminal Justice Act, 1925 (15 & 16 Geo. 5, c.86), s.35 (1):

"For the purpose of removing doubts, it is hereby declared that a document may be a false document for the purpose of the Forgery Act, 1913, notwithstanding that it is not false in such a manner as is described in subsection (2) of section 1 of that Act."

I. THE MAKING OF A FALSE DOCUMENT NECESSARY TO CONSTITUTE FORGERY

The older writers, and the courts, usually spoke of "writings" and not of "documents", while the many statutes which were in operation prior to 1830, since they dealt with specific instruments closely described, did not have occasion to adopt any general definition of the words "writing" or "document". It would seem that no precise distinction between "writings" and "documents" has ever been drawn in the past or is needed at present.

Since, however, the older law did mark off documents of a public or at least formal character as alone coming within the

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crime of forgery, leaving all "ordinary" writings unprotected, there lingered for a long time a trace of doubt[1] as to whether there might still be needed some special characteristic in a writing to make it a "document" capable of being forged. There seems to be no valid reason for the continued existence of any such doubt. The Forgery Act, 1913 (3 & 4 Geo. 5, c.27), gives no definition of "document", but it is submitted that for the purposes of section 4 of that Act the word may be defined as "Writing in any form, on any material, which communicates to some person or persons a human statement, whether of fact or fiction". The real test of a document is whether it is a writing which conveys to the mind of all persons able to read it the same message of the spoken word. The message must emanate, or purport to emanate, from a human being; accordingly the "reading" on a gas meter, on a steam pressure gauge[2], on a thermometer, or such-like mechanical register, will not be a message which can be the object of forgery. For although the figures on the meter of a taxicab may be regarded as an "account", such a meter, it is submitted, is not a "document" for the purpose of the law of forgery. A picture, as a work of art, is not a document because, although it may convey some idea or even message of an emotional kind to a spectator, it will not necessarily convey the same message to all spectators. It is one of the peculiarities of the law of forgery that there has been no authoritative definition of the word "document", which has gradually taken the place of the word "writing" in this connection. It is submitted that there is no need to distinguish the two words and that for

1. there lingered for a long time a trace of doubt...= o urmă de îndoială a continuat să existe vreme îndelungată...

2. ... accordingly the "reading" on a gas meter, on a steam pressure gauge,... = în consecinţă, "citirea" contorului de gaze, a unui aparat de măsurat tensiunea vaporilor...

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the purposes of forgery only a "writing" can be forged. Secondly, a writing is only forged when it is rendered "false", that is, when it tells a lie about itself. A writing may be made of any material whatever, and, as above stated,it consists in symbols which convey to the mind of the reader a message of the spoken word. The essential point is that the message should be the same to all persons who can read it[x]; it may be in any language, and in any form of lettering or code, such as a picture cipher. An engineer's blue print will be a document if it in fact is intended to be read, and can be read, by all qualified persons who look at it, in terms of the same spoken words; this, of course, is a question of fact which it may be difficult to establish. But a picture which is produced as a work of art is not a writing, and therefore not a "document", since it is not intended by the painter nor viewed by the spectator as conveying any verbal message which will be the same to all who examine it. When, however, the artist paints his signature on his painting this is, according to the common experience of mankind, intended to be read by the spectators, and is read by them, as a statement that the man who thus signed his name painted the picture. It conveys this meaning just as fully as if the painter had written out in ordinary script,and signed, a statement to the same effect upon a label which he had then glued to the back of the picture. That was, however, not the view of the facts which was taken by the Court for Crown Cases Reserved in the case of R.v.Closs.

The prisoner had been convicted on an indictment which inter alia contained counts averring that he had offered and exposed for

x) Whether by sight or by touch, as in the case of Braille printing for the blind.

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sale a copy of an original picture by John Linnell, an artist in painting of great celebrity, "well knowing the name of the said J.Linnell so painted upon the said copy to be forged". The indictment also averred that John Linnell had painted the original picture and that he had painted his name thereon "to denote that the said picture had been painted by him the said John Linnell."

On behalf of the prisoner it was contended that forgery must be of the whole or of some material part of a written instrument; that there cannot be a forgery of a picture; and that the name "Linnell" was no more than a tree or a house painted upon it. It was further submitted that if a man were to put the name of Joseph Manton upon a gun, and pass it off as made by[1] that maker, surely that would not be forgery of the gun; that the name of a painter in a picture was no more than a trade mark on goods, and that it had never yet been held that copying trade marks was forgery. Counsel submitted that the only subject of forgery here would be the signature, but that there was no averment that there was any uttering of the forged signature as distinct from the picture, even if that would be an offence.

It could not, of course, be properly maintained that either a picture or a gun, as such, could be forged, since neither is in any sense a writing or a document. But the point of the case lay in the question whether the writing of the signature in paint upon the canvas was such a writing as could be forged. Counsel for the prosecution answered the technical point on the wording of the indictment by arguing:

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1) ... and pass it off as made by... = şi să o dea drept făcută de....

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"The third count is a good count for forgery. It shows that the signature of Linnell was a forgery, and that the prisoner knowingly put off the picture with the signature upon it. It is distinctly averred, therefore, that the prisoner uttered the signature if he uttered the picture with the signature attached. Suppose that he had uttered a separate document, purporting to be a certificate of Linnell, signed by him, that the picture was of his painting, that would surely be a forgery, and the fact that such certificate is on the painting itself will not make it less a forgery". Cockburn C.J. interposed: "If you once go beyond a writing where are you to stop? Could there be a forgery of sculpture?There is here no allegation of a distinct uttering of the signature."

The case was complicated by the inclusion in the indictment of a count charging the prisoner with the offence of a cheat at common law. While holding the opinion that the evidence did disclose such a cheat the court nevertheless quashed the conviction on the ground that the count in question was faulty in that, although it set out the false token, it did not sufficiently show that it was by means of such false token that the defendant was enabled to pass off the picture and obtain the money. The conviction on that particular count, therefore, was quashed on a technicality. If the conviction on the third count, viz., for uttering a forged document, has also been quashed on another technical point, in that the court found it necessary to rule that as the indictment was framed it averred that the picture was the forgery and did not contain sufficient averment that it was the signature upon the canvas which alone formed the forged writing, then the case would present no difficulty; for clearly a picture, as such, is not a writing which conveys a spoken message. The court reserved

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judgment and finally quashed the conviction. There is, however, nothing in the judgment, as reported, to show that the conviction was quashed on the technical point that the indictment did not aver that the signature itself was forged. In fact, however, in delivering the judgment of the court, Cockburn C.J. said,

"As to the third count, we are all of opinion that that was no forgery. A forgery must be of some document or writing; but the name of Linnell in this case can only be regarded as an arbitrary mark put upon the picture by the painter to enable him to recognise his own work."

In the Weekly Reporter the words in the judgment are given as,

"Linnell's name in this case must be looked at merely as in the nature of an arbitrary mark made by the master to identify his own work."

The shorter report in the Law Times reads,

"Forgery must be of some document or writing; this is only of a mark on a picture in order that it may be recognised as a picture by Linnell."

In the other two reports the words are reported,

"this was merely in the nature of a mark put upon the painting with a view to identifying it, and was no more than if the painter had put any other arbitrary mark made by him, as a recognition of the picture being his."

It is submitted that it is a fair conclusion that the court were deciding a matter of fact, and were giving the opinion that a painter's signature is not a message to the reader that the picture is the work of his hand, but is merely put there so that

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the painter himself shall be able to identify the picture. It does not appear that any evidence had been given by artists or other witnesses as to this question of fact, and such a conclusion as that suggested would not accord with the ordinary intention of artists or the understanding of those who view pictures. Even so there can be little doubt that the fabricator of the false picture did put his particular signature upon it in order that it should seem to readers to be a statement that the genuine Linnell had signed it as a certificate that it was his work. Even where a gun has been stamped with a name, such as Joseph Manton, these words, it is suggested, are usually read as having been imprinted there as a statement by the well-known gun maker that he had made the gun. Statutory provisions have been enacted which are more effective than the law of forgery for the protection of trade marks, but this does not alter the meaning conveyed by the publication of those trade marks.

If, as is contended, the court in R.v.Closs decided that case on a strange view of the facts, there is no reason why the decision need be followed. If, however, the court meant to state that a painter puts his signature on his picture in order to indicate to the spectators that it is his own work then it is difficult to see how they could reach the conclusion that there was no criminal forgery, for such a conclusion seems to be an acceptance of the argument expressly advanced by counsel for the prosecution. The decision would seem to amount to a declaration that a statement written upon a base which is itself not a document cannot be a document, which would be a reductio ad absurdum, since a plain piece of paper is no more a document than is a piece of canvas with paint laid upon it, and yet a statement in writing upon a plain piece of paper is a document.

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It may be useful to take the matter a little further. If it be supposed that the genuine John Linnell had written out and signed a full certificate on paper to the effect that "the picture to which this writing is affixed" had been painted by himself,and then some dishonest person had obtained possession of that paper and had fixed it to the back of a picture which had not been painted by Linnell, there would have been no forgery, for the document, as before, consists in the writing, the only difference being that here the writing is on a paper base, whereas before the base was the canvas of the picture itself. But in the supposed instance the writing is not false since it does not tell a lie about itself,for it is exactly what Linnell wrote, and therefore it is not forged. This imaginary example may assist in the understanding of the later case of R.v.Smith.

The prisoner was convicted upon an indictment charging him with forging and uttering. It appeared that the prosecutor,George Borwick, was a vendor of powders, some called Borwick's baking powders, and others Borwick's egg powders, which were put up for sale in packets wrapped in printed papers. The printed papers described the powders as "Borwick's Original German Baking Powder" and "Borwick's Metropolitan Egg Powder" respectively, and there was in addition a facsimile signature of George Borwick. The prisoner made up similar powders and, representing his name to be Borwick, caused labels to be printed as exact copies of those of the prosecutor, save that the facsimile signature was omitted.His conviction was quashed by the Court for Crown Cases Reserved. Two of the judges were not prepared to agree that the printed wrappers were documents which could be forged; but Bramwell B. went further

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and took the point that[1] if the wrappers were documents, even so they were not false. He said "In the present case one of these documents is as good as the other - the one asserts what the other does - the one is as true as the other, but the one is improperly used. But the question now is, whether the document itself is a false document... I cannot see any false character in the document. The prisoner may have committed a gross fraud in using the wrappers for that which was not the genuine powder, and may possibly be indicted for obtaining money by false pretences, but I think he cannot be convicted of forgery."

This judgment depends upon the view that there was nothing written upon the label which represented that it had been printed by the true George Borwick, the facsimile signature having been omitted; the label did not purport to have been printed by anyone who did not in fact print it. The prisoner's offence, therefore, was no more than if he had obtained some of the prosecutor's genuine labels and had dishonestly wrapped them round his own powders.

THE PROFILOGRAPH

The one industrially-used surface analyser which seems most nearly suited to criminalistics problems is the "Profilograph". This instrument is of the mechanical-optical type, and was patented July 21,1936, under U.S.Patent Number 2,048,154. According to the

1). Bramwell B. went further and took the point that... = Bramwell B. a mers mai departe şi a adoptat punctul de vedere după care ....

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information available, the device was not produced commercially, there being but four in existence. It was designed primarily for the examination of surface contours on machine products. One of the original instruments is in use at the testing laboratory of the Timken Roller Bearing Company, Canton, Ohio, where it is used for the analysis of bearing surfaces.

The Profilograph is the first surface analyzer with which the writer became familiar, and provided the basis for developments leading to the application of such devices to firearms and tool-mark problems in the field of Criminalistics. Upon learning (in March 1950) of the existence of the Profilograph, inquiry was made of Timken Company as to its nature. As a result of this and later correspondence, E.G. Boden, Experimental Engineer of that company, arranged to make certain analyses of a typical tool-mark specimen and a fired bullet in order to demonstrate whether the instrument could serve a purpose in Criminalistics. The result of these analyses proved conclusively that the technique had application in the field of police science provided it could be adapted more specifically to the usual forms of evidence-materials. As an outgrowth of these experiments, the author developed an instrument of similar character, but with such modifications as better suited it to criminalistics problems. Because this instrument (the Striagraph) was inspired primarily by the Profilograph, and because the latter has rather important differences in design, it is appropriate that some description be provided of the Profilograph and its operation.

Basic Design of the Profilograph. The Profilograph is a photo-recording instrument making use of the optical lever for vertical amplifications. It utilizes a diamond-point tracer needle

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as a stylus and a drum-type recorder. The instrument is equipped with a moving stage mechanism which effectively draws the specimen along in a straight line by means of a lead screw at the base of the stage. The tracer point is located at the end of a relatively short lever, the fulcrum of which is a flat spring connecting this lever to a longer arm supported from an upright some distance away. Mounted to the top of the moving lever is a small mirror so positioned as to receive a narrow beam of light (horizontally disposed) from a lamp housing. A vertical motion of the tracer needle and short lever causes this "wiggler mirror" to tilt. The reflected beam of light is thus deflected up or down, and by use of properly placed reflecting prisms or mirrors is directed toward the upright recording drum where it is condensed into a small spot of light by means of a cylindrical lens. The upward and downward motion of this moving spot of light as it passes through a slot in the drum housing, causes it to record as a wavy contour on the rotating photosensitive surface of the drum. The rotational speed of the drum is so related to the lateral movement of the specimen stage as to provide an effective horizontal amplification of the specimen. Vertical amplification is controlled by the length of the light-lever between wiggler mirror and drum.

As designed and constructed, the Profilograph has many detailed features not accounted for in the simplified explanation presented above. These include a "pilot arm" which minimizes errors from accidental stage motion, change gears for modifying horizontal amplification ratios, etc. The basic design, however, is as given above.

This instrument is suited to the analysis of flat specimens, or to lengthwise tracing of cylindrical stock. It appears that

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tracings can be made of interior surfaces provided they are of fairly large internal diameter (sufficient to clear the tracing arm). If applied to a cross-sectional line of a cylinder (as would be required in analysing bullets), an eliptical tracing will result from the amplification ratios utilized. The instrument is capable of providing vertical amplifications of a few thousand times specimen striac height, in conjunction with a fair range of lesser horizontal amplifications. One typical tool-mark run, for example, showed a ratio of 30 x horizontal to 1000 x vertical. The object of the technique, of course, is to provide a far greater vertical amplification than horizontal in order to emphasize detail.

The writer has not seen the Profilograph, but a consideration of its design reveals it to have some apparent limitations to work in Criminalistics. The tracing needle could only be made to contact a specimen by one of two different methods. Either the lever arm would have to be raised or lowered on its supporting post, or else the specimen stage would have to be on a vertical rack. Neither of these methods would permit control over the pressure exerted by the needle on the specimen, beyond observation of the amount of deflection obtained in the fulcrum spring. In other words,one would, for example, raise the specimen stage until specimen contacted the tracer needle, and then raise it a bit higher to assure that the needle would be in contact with all irregularities on the specimen surface. This does not provide fine control of needle pressure.

A second shortcoming would appear to be the relatively short needle lever arm. While the position of the mirror on this arm does not affect the degree of deflection obtained in the light beam (the angle being constant regardless of[1] placement), the length

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1) regardless of = indiferent de...

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of the lever arm does so affect it. Thus the distance between tracer point and spring fulcrum has a bearing on the angular deflection obtained at the wiggler mirror. For satisfactory amplification it appears that this lever must be less then one inch long, probably only one-half inch in length. A lever of such short length calls for fair spring pressure if it is to follow irregularities having a wide range of depths, and also causes it to travel through too short an arc to give accurate horizontal placement of detail. (As the needle moves up or down below a horizontal line, it also moves back in an arc determined by lever length). The effectiveness of the reflecting mirror (wiggler mirror) system of amplification is limited by the angular deflection of the attached lever, and hence by the length of the lever. This limitation requires that the lever be relatively short. While the reflecting mirror method of obtaining a good optical lever is superior to others, this limitation upon it becomes a hindrance in other respects. The short lever, as indicated above, does not permit close control over pressures, does not provide an adequate "working distance" for placement of specimens, and is more subject to damage than a long lever which can easily be moved out of the way.[1)]

The surface analyser is probably the one instrument using an optical lever syste, where "working distance" may be regarded as highly important. Most devices utilizing the optical lever can appropriately use the moving mirror system because the mirror can be remotely located with respect to the fluctuations being detected. Working distances are not generally involved in the usual photo-

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1).... which can easily be moved out of the way... = care poate fi îndepărtată cu uşurinţă.

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recording instruments. For work on criminological specimens - particularly soft materials-working distance and needle pressure are sufficiently important so that the wiggler mirror system of amplification presents definite design problems. While the use of more than one moving lever would to some extent solve that problem, this introduces other difficulties even more serious.

Although the Profilograph is admirably suited to the types of analyses for which it was designed, and performed exceptionally well on certain test specimens of a criminalistics nature, it is believed that the limitations described above would make it somewhat less than satisfactory for routine criminalistics work.

Profilography

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ADMINISTRATIVE LAW

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DEVELOPMENT OF LOCAL GOVERNMENT

It is doubtful whether even the oldest of our central organs of government can be traced back to an earlier time than the reign of William the Conqueror, but our present counties and parishes find their origin in the shires[1] and hundreds[2], vills[3] or townships[4] of pre-Norman days. The central government of England was largely superimposed upon existing local organisation. Modern legislative reforms have recognised local government as an established fact and our present local government areas largely reflect ancient conditions.

In the early Middle Ages each county or shire had its court or governmental assembly, presided over by the sheriff as the royal representative and composed of the freemen of the county. The county court performed general governmental as well as judicial functions. Within the county were hundred courts similarly composed and under the supervision of the sheriff. The manorial courts of the feudal system were the courts of the smaller units, the vill and the township. Boroughs which obtained charters from the

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1) shire = diviziune teritorială (comitat) alcătuită dintr-o serie de diviziuni mai mici; condusă de un alderman şi un şerif înainte de 1066.

2) hundred = subdiviziune a comitatului avînd o curte locală proprie

3) vill = subdiviziune administrativă şi financiară a (2)"hundred", în dreptul englez echivalentă cu "manor"; înlocuită cu timpul de parohie.

4) township = veche unitate administrativă, identică ca întindere cu o parohie mică, sau parte a unei parohii mari.

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Crown possessed varying degrees of autonomy. The justices in eyre[1], royal judges with wide powers both administrative and judicial, controlled the local courts by means of periodic visitations. From the time of Henry II onwards royal justice began to cover the whole country through the circuits of justice, of assize and general gaol-delivery. The local and manorial courts were superseeded and with them the office of sheriff lost much of its former importance.

In the fourteenth century the newly created justices of the peace acquired judicial, police and administrative powers. The parish, an ecclesiastical unit, also became the unit of local administration, just as in earlier times the feudal manor[2] had given an organisation to the vills or townships. It was the parish which was liable for the repair of roads and later for the administration of the Elizabethan poor law. Justices exercised control over the parish and its officers. The justices themselves were controlled by the Council and the Court of Star Chamber[3], but this influence disappeared with the curtailment by the Long Parliament in 1640 of the powers of the former body and the abolition of the latter.

No attempt was made after the Revolution Settlement in 1689 to re-impose central administrative control. Apart from the

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1) eyre = (curte) în circuit.

2) manor = unitate de organizare teritorială rurală în Anglia, bazată pe autosuficienţa economiei, în special constînd dintr-o moşie a unui lord care avea o serie de drepturi asupra pămînturilor şi arendaşilor, printre care dreptul de a ţine judecată.

3) The Court of Star Chamber = curte care a existat în Anglia din sec.15 pînă în 1641 şi care a exercitat o largă jurisdicţie civilă şi penală în baza unor norme de procedură potrivite scopurilor unor suverani absoluţi.

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boroughs[1], which were largely autonomous acting under their charter powers, general local administration was in the hands of the county justices sitting in Quarter Sessions[2]. Judicial control existed by means of the prerogative writs of mandamus[3], certiorari[4] and prohibition issued by the Court of King's Bench. It was during this century that there was developed the device of the ad hoc authority - a separate body for a particular service as opposed to the general administrative authorities exercising various powers in a particular area, the parish and the justices. At first by means of local Acts and later by public measures applying to the whole country Parliament encouraged the creation of ad hoc authorities for different purposes, e.g. commissioners of sewers and improvement commissioners.

With the Report of the Poor Law Commissioners in 1834 there opened an era of local government reform. By the Poor Law Act, 1834, there were established ad hoc authorities (boards of guardians) to administer the reformed poor law and at the same time there was re-imposed central control through the Poor Law Commissioners - a body of three officials of the Central Government with no Minister responsible to Parliament for their activities.[x]

1) borough = zonă urbană în Anglia, încorporată în scopul autoguvernării; circumscripţie urbană sau oraş care trimite reprezentanţi în parlament; istoric: grup fortificat de case în evul mediu formînd un oraş şi avînd o cartă.

2) Quarter Sessions = sesiuni judecătoreşti trimestriale.

3) writ of mandamus = ordonanţă (mandat) extraordinară emisă pentru cazurile cînd nu există un remediu legal adecvat; dată de către o curte superioară unui tribunal inferior, unei corporaţii, persoane, etc., ordonînd îndeplinirea unei îndatoriri publice impusă de lege.

4) writ of certiorari = ordonanţă provenind de la o curte superioară prin care se cer rapoarte de procedură ale unei curţi inferioare pentru a fi examinate în vederea unei judecări mai rapide sau a evitării unor erori şi nereguli.

x) Their functions were in 1847 transferred to a Poor Law Board responsible to Parliament through its President, a Minister of the Crown.

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Other reforms followed. The boroughs underwent a drastic reorganization under the Municipal Corporation Act, 1835, and became effective units of administration governed by councils elected on a uniform franchise.

By the end of the nineteenth century the all-purpose authority elected on a wide franchise was in the process of superseeding the ad hoc authority as the administrative agency of the main services of local government. The Municipal Corporations Act,1882, like the Act of 1835, was primarily concerned with internal organization and corporate property. The Act of 1835 had secured that all borough councils should be elected on a wide franchise. The 1882 Act was a consolidating measure and confered few powers of local government. While it strengthened the organization of the more efficient authorities and thus indirectly contributed to the supersession of the ad hoc authority, it did not result in any considerable transfer of powers. The Local Government Act, 1888,transferred to elected county councils the administrative powers of Quarter Sessions. The Local Government Act, 1894, converted into elected urban district councils the urban sanitary authorities which had been set up under various Public Health Acts and established elected rural district councils, to which were transferred the public health functions of the boards of guardians. Thus highways and public health became services of the all-purpose authorities. Early in the twentieth century education, and in 1929 the poor law, henceforth known as public assistance, were transferred to the larger of such authorities.

Ad hoc authorities were, however, established for various purpose through the nineteenth century, e.g. the school boards by the education Act, 1870, which endured until the larger all-purpose authorities became local education authorities in 1902.The principal

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remaining ad hoc authorities, the boards of guardians, were abolished by the Local Government Act, 1929, which transferred their functions to county and county borough councils, but ad hoc authorities remained for a few special purposes, e.g. land drainage. Moreover for certain purposes the larger authorities have been divided into ad hoc districts not corresponding to the normal county districts, e.g. the areas of guardians committees into which counties were divided for public assistance purposes by the Poor Law Act, 1930. Unde the Education Act, 1944, the local education authorities are the county and county borough councils. In order to preserve and extend local initiative in the county areas, county councils must draw up schemes of divisional administration for the delegation of certain of their functions to divisional executives. Boroughs and urban districts with a population of not less than 60,000, or a school population of not less than 7,000, will be divisional executives and may draw up their own schemes of delegation. In special circumstances the Minister may confer a similar right on other boroughs or urban districts.

For many matters, too, co-operation between areas is essential for administrative efficiency and economy and the principle of the ad hoc authority has tended to reappear in the shape of[1] joint committees or joint boards. A joint committee, e.g., a maternity and child welfare commitee[2] of two public health authorities, is a committee to which different authorities appoint representatives who are responsible to the appointing authorities. The use of joint committees enables services to be administered in areas most fitted

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1). in the shape of ... = sub formă de ...

2). a maternity and child welfare committee... = un comitet pentru problemele mamei şi copilului.

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to produce efficiency without any sacrifice of the convenience and symmetry secured by the maintenance of a uniform system of all-purpose local authorities. A joint board, e.g. a board set up by the Minister of Health to govern two or more districts unified for any public health purposes, is, when once appointed, a separate entity with powers of its own.

The Poor Law Act of 1834 imposed central power upon local authorities and the poor law under its modern name of public assistance remains to-day a service where direct control is imposed, but the control is that of a Minister responsible to Parliament and not that of an independent board. The Municipal Corporations Acts of 1835 and 1882 and the Local Government Acts of 1888 and 1894 imposed but little central control, but in respect of particular services, e.g. public health, housing,[1] education and town and country planning[2] there has been a steady advance towards central control mainly by indirect though effective means. In 1872 there was established the Local Government Board (now the Ministry of Health) and as a result[3] poor law and public health came under one central control though only in the case of the poor law was the control direct.

CHARACTERISTICS OF LOCAL AUTHORITIES

There is no hard and fast dividing line between the services administred by the central and local government. In the main[4] matters of local rather than national importance are entrusted to

1). housing = construcţia de locuinţe
2). town and country planning = sistematizare urbană şi rurală
3). as a result = drept urmare
4). in the main = în principal

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local authorities, but many services are administered by the local representatives of central authorities which, had they been established earlier, might have been entrusted to local authorities. Some modern services, e.g. national health insurance, unemployment insurance and assistance, and widows', orphans' and old age pensions are so administered. Nevertheless, new functions are also constantly placed upon local authorities by Parliament, usually accompanied by provision out of the Exchequer[1] to meet part of the cost. Older services, e.g. public assistance (poor law relief), public health and highways, are mainly administered by locally elected bodies. Education which in a strictly logical system should be a central service, is administered by the local education authorities, but central inspection, regulation and supervision is closer than with other local services (except public assistance) and the Ministry of Education since 1944 controls and directs the execution by local education authorities of a national policy.

The prerogative plays no part in local government, and local authorities, though representative bodies chosen by popular election have not the autonomy of Parliament. Even on matters admittedly of local rather than national interest they cannot determine their own powers. Their powers are derived from statutes and exercised subject to the ultra vires[2] rule. Within the limits of its powers a local authority may act as it pleases provided that it performs the specific administrative duties imposed upon it and subject always to the pressure that the Central Government can bring to bear[3] through supervision, withholding of grants[4], and,

1). the Exchequer = trezoreria
2). ultra vires = dincolo de limitele, în plus peste puterea sau autoritatea legală.
3). the pressure that the Central Government can bring to bear = presiunea pe care guvernul central o poate aplica.
4). withholding of grants = retragerea subvenţiilor.

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in the last resort[1], supersession ...

Local elected authorities mainly perform administrative functions. Within their powers they determine policy and they have power to enact by-laws, subject to the sanction of the appropriate government department. They are, however, chiefly concerned with the maintenance of public services which they are by law required to administer. The work of the larger councils is conducted through committees. Most matters are initiated in committee. Even the general policy of a council arises on a committee report rather than at the outset by resolution of the council. Most communications addressed to a council are sent to the appropriate committee and are never seen by the councils as a whole, if the committee system had not been adopted.

No payment is made generally to members of elected local authorities in return for[2] their services. A county council is empowered to pay the expenses of its members for attendance at the meetings of the council and its committees. Elected councillors render only part-time service.[3] Inevitably there results an increase in the influence of the paid official. The direction of policy is the task of the elected representative; its execution that of the permanent official. A local government officer is more closely controlled by the committee to which he is responsible than are civil servants by Ministers. Committees do not confine themselves to policy, but supervise the administrative work for which they are responsible. Where there is a capable chairman of a committee, there is little danger that the permanent official will

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1). in the last resort = în ultimă instanţă

2). in return for ... = în schimbul...

3). part-time service = normă parţială

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direct policy ever much. Indeed, there is more danger that committee members will be too active in matters of routine which are better left to permanent officials.

The officers of local authorities are not members of a single public service, as are civil servants, but a local authority recruits its staff independently, and at present the system of recruitment falls short of[1] the carefully contrived system of the Civil Service. Officers are responsible to the elected bodies by which they are appointed, though in some cases the appointing authority is anomalously not liable for the acts of its servants where the latter are guilty of negligence in the performance of duties placed by statute upon them as agents of the Central Government. There is an obligation to appoint certain officials. Thus both a county and borough council must appoint a clerk, a treasurer, a medical officer of health and a surveyor. A borough must also appoint a sanitary inspector.

We have seen how by 1930 the ad hoc authority had for the time being been, with a few exceptions, superseded by the all-purpose authority. There is, however, no finality in the distribution of functions between the various authorities. The Central Government encroaches upon local authorities and larger authorities absorb the power of smaller authorities. Certain matters once reasonably entrusted to local authority become of importance to the nation as a whole or require the application of a uniform national policy. Certain services are used by the nation as a whole and cannot rightly remain a charge upon local areas. Thus...trunk

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1) the system... falls short of = sistemul ... nu este la nivelul

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roads[1] were transferred in 1936 to the Ministry of Transport. The importance of fire services to the Civil Defence during the Second World War led to their amalgamation into a National Fire Service under the Home Office. As reconstruction plans began to take shape[2] there was seen a marked tendency to deprive local authorities, and particulary the smaller ones, of their powers in the interests of efficiency and uniform administration. Even where there is no pressure for the transfer of powers to the Central Government, there is pressure for the transfer of vital services to the larger authorities and the creation of larger areas. It is difficult to equate the comparative inefficiency and penury of a poor agricultural county or a small borough in a rural area with the efficiency and wealth of a prosperous and autonomous urban area of the size, say, of Birmingham. On the other hand as areas become larger, local patriotism becomes less and there is no longer direct contact between the citizen and his local councillor. If the smaller bodies are shorn of all their effective powers, it will no longer be worth the while of good men to stand for election[3]. The nation has gained much from the use of local government as a training ground for national politics, and national life would be impoverished if the smaller authorities disappeared or became ineffective. There is, however, a widespread belief that the smaller authorities do not attain an adequate standard of efficiency and that they are in too close contact with their constituents to apply their powers fearlessly where individual rights are affected.

Constitutional Law
by G.Godfrey Phillips and E.C.S.Wade, 1946
Chapter I, A.B., Part.VI; pp.218-224

1). trunk roads. = artere principale
2). to take shape = a se contura
3). it will no longer be worth the while of good men to stand for election = nu va mai avea sens ca oameni de valoare să candideze în alegeri.

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COMMERCIAL LAW

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COMMERCIAL ARBITRATION: EXPANDING THE JUDICIAL ROLE

I. Introduction

Arbitration is usually defind as "the voluntary agreement of ... persons to submit their differences to judges of their own choice and to bind themselvee in advance, to accept the decision of judges, so chosen, as final and binding." A specialized category of arbitration - commercial arbitration - is widely used by businessmen and their attorneys as a speedy and relatively inexpensive method of trying and resolving contract disputes before commercial specialists.

II. Business Desires and Present Arbitration Law

The businessman faced with commercial disputes or the possibility of such disputes has four methods available for resolving them. He may negotiate, capitulate, arbitrate, or litigate. Each method has advantages depending upon the circumstances surrounding the dispute, although the last three are probably never resorted to without some attempt to negotiate. The businessmen may capitulate when he is sure to lose if he presses further,or when the amounts or principles involved are insignificant in relation to other factors such as maintenance of goodwill or the cost of

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pursuing the matter further. However, those disputes that are not negotiated to a settlement generally will be either arbitrated or litigated. Arbitration will be used to settle disputes when the factors favoring its use outweigh those favoring litigation. The question then becomes what factors are considered by the businessman when he makes the choice between these alternatives.

A. Factors Favoring Arbitration

The factors influencing a businessman to use arbitration to resolve disputes include speed, economy, privacy, maintenance of goodwill, and the use of experts as arbitrators. Arbitration is speedier than litigation because currently most court calendars are extremely crowded[a]. Also, arbitration is more expedient because of simplified procedures and informality in presentation of evidence. Since the arbitration tribunal is set up to handle only the specific dispute referred to it, there is no waiting for courtroom space of officials. The use of experts as arbitrators further accelerates the process, because it eliminates the need for expert witnesses to explain trade practices to the court. Acceleration of the decision process is beneficial since evidence will be received before it becomes stale. In addition, business capital will not be tied down for long periods of time since it is not necessary to set aside capital to satisfy possible future judgments. A greater chance also exists for recovering a judgment since there is less risk of the loser's going bankrupt or losing his assets.

Arbitration may also be less expensive then litigation. The additional time that the businessman and his attorney must spend

a) The average time between filing of a case and the final award is approximately two to three months in arbitration as opposed to fourteen months in litigation... Arbitration is also fast since there is no appeal as a matter of course and, therefore, the delay inherent in appeal is absent.

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in trial proceedings generates greater costs than the time spent in arbitration. Also, arbitration proceedings require the printing and writing of only a few records whereas a trial may require substantial documentation. The public also benefits financially since the costs of arbitration are paid entirely by the parties. These costs are not too burdensome to the businessman because most arbitrators serve without pay.

Great freedom is afforded by the arbitration agreement, because the parties can determine the place of arbitration as well as the court of competent jurisdiction, should resort to a court be necessary, even though there is no contact with the jurisdiction. The parties may also choose which law will be applied to the agreement. In addition, the agreement can specify procedures to be followed during the proceedings. Moreover, by selecting the place of arbitration, the parties may obtain privacy in the proceedings, which is often important to a businessman to protect the reputation of his company or product, trade secrets, and continuing useful business relationships.

In addition to the aforesaid factors favoring arbitration, Congress and a large number of states have enacted statutes attempting to further the use of commercial arbitration. These statutes uniformly provide for the enforcement of arbitration agreements and awards by the courts. Their primary purpose is to encourage arbitration and eliminate the necessity of resorting to court action to enforce awards. Consequently, specific statutory provisions declare written arbitration agreements irrevocable[b] and

b) The signing of a contract containing an arbitration clause binds both parties to arbitration, unless one party is able to raise one of the traditional contract defenses that exists in law or equity for the revocation of any contract... However, breach of contract is not a ground that may be asserted to avoid the arbitration clause... Once a court has determined that an agreement to arbitrate exists the merits of any dispute arising under the agreement are within the exclusive jurisdiction of the arbitrator.

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compel an unwilling party to arbitrate. Arbitration is further encouraged by sections expediting review of a party's claim that the arbitration is invalid and provisions authorizing the court to stay any action or proceeding in law or at equity, subject to arbitration. A party may proceed ex parte and obtain a valid award after this proceeding if the other party does not respond or appear after the notice of intention to arbitrate has been given. To avoid resort to the courts, statutory sections provide for confirmation of an award by the court upon the application of a party. Once the award is confirmed, a judgment or decree will be entered in conformity therewith. This judgment or decree will be enforced as any other judgment or decree.

B. Factors Weighing Against Arbitration

In deciding whether or not to use arbitration, the businessman must also consider those factors unfavorable to its use as a dispute settling mechanism. These factors include the unenforceability of agreements to arbitrate in many jurisdictions, inability to predict results, unfamiliarity with its procedures, and some risks inherent in the nature of the arbitrator's decisional processes. Under the common law an agreement to arbitrate is unilaterally revocable until the award is granted. Therefore,although the decision of the arbitrator is final, enforcement of an agreement to arbitrate, except by a suit for breach of contract, is impossible under the common law rule which is still in effect in most states. This defect has been partially remedied by the enactment in many states of arbitration statutes which contain specific provisions providing for enforcement of agreements to arbitrate.

An arbitrator is not required to follow substantive law,

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either legislative or judicial, but is free to decide the controversy according to his own interpretation of equity and justice. Furthermore, the arbitrator is not limited to legal or equitable remedies or to the rules governing their use by a court of law. The arbitrator's decision is final as to questions of law and fact. Therefore, case-to-case inconsistencies, errors of judgment, and misconstruction of contracts on the part of the arbitrator are risks of arbitration and not subject to judicial review.

Combined with the above factors is the businessman's knowledge that one party may have an advantage over the other due to his familiarity with arbitration and the availability to him of previous arbitration awards which may have some precedential value. While this disadvantage is not limited to arbitration, it is enhanced by the fact that arbitration records are not generally available to parties who are not members of the particular association. This is particularly true in cases involving insurance, where the company probably has on file many previous cases involving the policy or question in dispute while the policyholder's lawyer will not have access to such material. The same problem exists in arbitration before trade associations to which the businessman does not belong. Furthermore, the outsider suffers the additional handicap of being unable to participate in the selection of the arbitrators, who are usually picked from a panel selected by the trade association. All these considerations combine to create a desire among businessmen for judicial resolution or review of many arbitrated disputes.

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III. JUDICIAL REVIEW OF ARBITRATION

A. Pre-Arbitration Review

In reviewing motions to compel arbitration or to stay arbitration pending litigation, the courts have been confined by statute to reviewing only whether there is an agreement to arbitrate and, if so, whether the dispute is within that agreement. Court decisions on these issues are deemed necessary under the theory that arbitration is a creature of the contract and cannot exist outside of that agreement. Traditionally, the courts have decided these questions by using the criteria normally employed to determine the existence and validity of a contract. Thus, the court will look to the contract in order to determine if mutual assent is lacking. If the contract is void for lack of mutuality,[1] the arbitration tribunal is a nullity.

The court also determines whether the subject of the contract is prohibited by law, but if the objection is based on public policy the arbitrator may be allowed to decide the issue. However, the courts still retain the power to set aside awards which violate public policy. In many jurisdictions both the issue of fraud in the inducement of the arbitration contract and the performance of a condition precedent are still reserved for court decision.

Recently, however, some courts have shown a tendency to surrender the decision of some of these pre-arbitration and award matters to the arbitrator of the dispute. This has been accomplished by the development of the separability theory whereby the arbitration clause is separated from the container contract. If the arbitration clause has not been obtained by a fraud particular

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1) for lack of mutuality = din lipsă de reciprocitate.

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only to it, it is valid and the arbitrator may decide the issue of whether the container contract was obtained by fraud.

The classic case illustrating this trend is Robert Lawrence Company v.Devonshire Fabrics, Incl, where the court held that the parties under a general arbitration clause can agree that the issue of fraud in the inducement as well as issues of performance under the contract be decided by the arbitrator, although the parties may not allow the arbitrator to decide the issue of fraud in the inducement of the separate arbitration clause. The Devonshire court reasoned that all doubts should be resolved in favor of arbitration in order to fulfill the parties' original intentions and to help esse the current congestion of court calendars[1]. In 1967 the United States Supreme Court, in Prime Paint Corporation v. Flood & Conklin Manufacturing Company affirmed Devonshire's view of the judiciary's restricted role prior to the arbitration proceedings.

B. Post-Arbitration Review

With judicial control and review prior to arbitration thus limited, the post-award review procedures become more important. After the arbitrator has reached a decision he is required to draw up an award, sign it, and deliver a copy thereof to each party. Upon receipt of the award, a party may move in court for confirmation of the award which will be granted unless the other party seasonalbly moves to modify, correct, or vacate the award. The award will be modified or corrected where miscalculation or mistaken description is obvious on the face of the award, or where

1) ... and to help ease the current congestion of court calendars= .... şi să ajute la descongestionarea rolului acţiunilor pe care-l au curţile.

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the arbitrator has decided a matter not submitted to him and the correction may be made without affecting the merits of the decision on the issues submitted.

An award may be vacated when fraud, corruption, or other undue means were used to procure it, when the arbitrator was biased or engaged in misconduct prejudicing the rights of any party, or if the arbitrator exceeded his powers. However, the practical problems of obtaining review are great. Usually the only writing required by statue is the award itself, which is difficult to review since it is usually only a statement of the amount awarded to the winning party. Bias is the ground usually chosen for attack of the proceedings and the award, but even here great leeway is allowed and few awards are overturned. This result is desirable, however, because most of the benefits of arbitration are lost when a party resorts to the courts after arbitration.

Minnesota Law Review
Vol.52, nr.6,
June,1968
pp.1218 - 1228

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M I S C E L L A N E A

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Custom (costume, It.coustume, coutume,Fr.); costumbre, Sp.; consuetudo, Lat.), an unwritten law established by long usage and the consent of our ancestors. If it be universal, it is common law; if particular, it is then properly custom. The requisites to make a particular custom good are these: (1) It must have been used so long that the memory of man runs not to the contrary; (2) it must have been continued; and (3) peaceable; also (4) reasonable; and (5) certain; (6) compulsory, and not left to the option of every person, whether he will use it or not; and (7) consistent with other customs, for our custom cannot be set up in opposition to another. Customs are of different kinds, as customs of merchants, customs of a certain district, customs of a particular manor, etc. If there be an invariable certain and general usage or custom of any particular trade or place, the law will imply that a party contracting upon a matter to which the same has reference, intended to import such usage or custom into his contract.

Wharton's Law Lexicon
London 1872
p.265

Common Law (lex communis, Lat.), the meaning of this term is very ambiguous, the expression being used in various senses according to the objects with which it is contrasted, it being so contradistinguished, sometimes from the Statute Law, sometimes from the Civil and Canon Law, occasionally from the lex mercatoria, and frequently from Equity. Many use it to designate simply a law

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"common" to all the realm. It is also sometimes adopted in opposition to criminal law, which is certainly erroneous, since the common law includes all the criminal law, chich is not of positive statutory origin... It may upon the whole be received as generally true, that our Common Law traces its origin to the early usages and customs of the aboriginal Britons, and was necessarily augmented, in different ages, by the admixture of some of the laws and usages of the Romans, the Picts, the Saxons, the Danes, and the Normans, ... The Common Law includes those principles, usages, and rules of action, applicable to the government and security of person and property, which do not rest for their authority upon any express or positive declaration, of the will of the legislature... "Our Common Law system consists in applying to new combinations of circumstances, those rules of law which we derive from legal principles and judicial precedents; and for the sake of attaining uniformity, consistency, and certainty, we must apply these rules when they are not plainly unreasonable or inconvenient, to all cases which arise; and we are not at liberty to reject them, and abandon all analogy to them,in those to which they have not hitherto been judicially applied, because we think that the rules are not as convenient or reasonable as we ourselves could have devised." (Lord Wensleydale)... This at once marks the leading distinction between Common Law (lex non scripta) and Statute Law (lex scripta). The distinction between written and unwritten law is adopted from the Romans, who borrowed it from the Greeks. ... In thus distinguishing our own laws into the scriptae or statute and non scriptae or common, we use the latter in a peculiar and restrained sense, signifying by it nothing more than that the original institutions and authority of the law are not set down

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in writting, as is the case with acts of parliament; but that it receives its binding power as a law, from long and immemorial usage, and universal reception throughout the realm. The authenticity of these customs, rules, and maxims, rests entirely upon reception and usage, as declared by our judges, who are the sworn depositaries and interpreters of our law. This common law is properly distinguished into three kinds: (1) General customs, or those applicable to and governing the whole kingdom, comprehending the law of nations and the law merchant. (2) Particular customs, i.e. affecting the inhabitants of particular districts. (3) The Civil and Canon Law, properly denominated the ecclessiastical, military, maritime, and academical laws.

Wharton's Law Lexicon
London, 1872
pp.2o7 - 2o8

Inns of Court. There are four of them, exercising the right of admitting persons to practise at the bar - the Inner Temple, the Middle Temple, Lincoln's Inn, and Grey's Inn. ... The Inns of Court now act jointly and on the same rules in admitting persons to membership and calling them to the bar, by the following regulations, consolidated and agreed on, Trinity Term, 1860.

Admission of Students

(1) Every person who had passed a public examination at any university within the British /Commonwealth/, is at once admitted as a student to any Inn of Court (but see Rule 7). (2) Every other person must, first, satisfactorily pass an examination in the English and Latin languages, and English history...

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(7) No attorney at law, solicitor, writer to the signet[1], or writer of the Scotch courts, proctor, notary public, clerk in Chancery[2], Parliamentary Agent, or agent in any court original or appellate[3], clerk to any justice of the peace, or person acting in any of these capacities, and no clerk of or to any barrister, conveyancer, special pleader, equity draftsman, ... or of or to any officer in any court of law or equity, or person acting in the capacity of any such clerk, can be admitted as a student to be called to the bar, or practise under the bar until such person cease to act in any of those capacities; and has taken his name off the rolls of any court on which it may be entered.

Readers

(28) To afford the students instruction and guidance in their studies, six readers are appointed: - 1. On jurisprudence and civil and international law, named by the Middle Temple. 2. On the law of real property[4], named by Gray's Inn. 3. On the common law, named by the Inner Temple. 4. On equity[5], named by Lincoln's Inn. 5. A separate course of lectures on international law is delivered by the reader on jurisprudence and civil and international law.

Wharton's Law, Lexicon
London,1872;pp.483-485

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1). writer to the signet = funcţionar judiciar (Scoţia) care răspunde de pregătirea mandatelor, ordonanţelor şi altor documente (termen analog cu attorney şi solicitor în Anglia).
2). Chancery = fostă înaltă curte, a doua după parlament, avînd jurisdicţie în Anglia şi Ţara Galilor în probleme de equity (vezi nota 5) şi diverse funcţii în dreptul comun; în prezent este înlocuită de o secţie a Inaltei Curţi, anume Chancery Division, avînd jurisdicţie în probleme de "equity".
3). court original or appellate = prima instanţă sau instanţa de apel
4). real property = proprietate imobiliară
5). equity = sistem de reguli suplimentare bazate pe principii şi legi stabilite, pe precedente recunoscute, etc. aplicabil de către judecători în aşa fel încît să suplimenteze legile de bază pentru a se suplini sau chiar înlocui aplicarea unor reguli din dreptul comun.

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Trespass (transgressio, Lat.), any transgression of the law less than treason, felony, etc.

The action of trespass lies where a person claims damages for trespass committed against him. A trespass is an injury committed with violence, and this violence may be either actual or implied; and the law will imply violence, though none is actually used, where the injury is of a direct and immediat kind, and committed on the person or tangible corporeal property of the plaintiff. Of actual villence, an assault and battery is an instance; of implied, a peaceable but wrongful entry upon the plaintiff's lands.

Wharton's Law Lexicon
London,1872
pp.965-966

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SUPPLEMENT

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A VOYAGE TO LILLIPUT

Chapter VII

The Author being informed of a Design to accuse him of High Treason, makes his Escape to Blefuscu.

Before I proceed to give an Account of my leaving this Kingdom, it may be proper to inform the Reader of a private Intrigue which had been for two Months forming against me.

I had been hitherto all my Life a Stranger to Courts, for which I was unqualified by the Meanness of my Condition. I had indeed heard and read enough of the Dispositions of great Princes and Ministers; but never expected to have found such terrible Effects of them in so remote a Country, governed, as I thought, by very different Maxims from those in Europe.

When I was just preparing to pay my Attendance on the Emperor of Blefuscu; a considerable Person at Court (to whom I had been very serviceable at a time when he lay under the highest Displeasure of his Imperial Majesty) came to my House very privately at Night in a close Chair, and without sending his Name, desired Admittance: The Chair-men dismissed; I put the Chair, with his Lordship in it, into my Coat-Pocket; and giving Orders to a trusty Servant to say I was indisposed and gone to sleep, I fastened the Door of my House, placed the Chair on the Table, according to my usual Custom, and sat down by it. After the common Salutations were over, observing his Lordship's Countenance full of Concern;

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and enquiring into the Reason, he desired I would hear him with Patience, in a Matter that highly concerned my Honour and my Life. His Speech was to the following Effect, for I took Notes of it as soon as he left me.

You are to know, said he, that several Committees of Council have been lately called in the most private Manner on your Account: And it is but two Days since his Majesty came to a full Resolution.

You are very sensible that Skyris Bolgolam (Galbet, or High Admiral) hath been your mortal Enemy almost ever since your Arrival. His original Reasons I know not; but his Hatred is much encreased since your great Success against Blefuscu, by which his Glory, as Admiral, is obscured. This Lord, in Conjunction with Flimnap the High Treasurer, whose Enmity against you is notorious on Account of his Lady; Limtoc, the General, Lalcon the Chamberlain, and Belmuff the grand Justiciary, have prepared Articles of Impeachment against you, for Treason, and other capital Crimes.

This Preface made me so impatient, being conscious of my own Merits and Innocence, that I was going to interrupt; when he intreated me to be silent; and thus proceeded.

Out of Gratitude for the Favours you have done me, I procured Information of the whole Proceedings, and a Copy of the Articles, wherein I venture my Head for your Service.[1)]

Articles of Impeachment against Quinbus Flestrin
(the Man-Mountain)

Article I

Whereas, by a Statute made in the Reign of his Imperial Majesty Calin Deffar Plune, it is enacted, that whoever shall make water within the Precincts of the Royal Palace, shall be liable to the Pains and Penalties of High Treason: Notwithstanding, the

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said Quinbus Flestrin, in open Breach of the said Law, under Colour of extinguishing the Fire kindled in the Apartment of his Majesty's most dear Imperial Consort, did maliciously, traitorously, and devilishly, by discharge of his Urine, put out the said Fire kindled in the said Apartment, lying and being within the Precincts of the said Royal Palace; against the Statute in that Case provided, & c. against the Duty, & c.

Article II

That the said Quinbus Flestrin having brought the Imperial Fleet of Blefuscu into the Royal Port, and being afterwards commanded by his Imperial Majesty to seize all the other Ships of the said Empire of Blefuscu, and reduce that Empire to a Province, to be governed by a Vice-Roy from hence; and to destroy and put to death not only all the Big-Endian Exiles, but likewise all the People of that Empire, who would not immediately forsake the Big-Endian Heresy: He the said Flestrin, like a false Traitor against his most Auspicious, Serene, Imperial Majesty, did petition to be excused from the said Service, upon Pretence of Unwillingness to force the Consciences, or destroy the Liberties and Lives of an innocent People.

Article III

That, whereas certain Embassadors arrived from the Court of Blefuscu to sue for Peace in his Majesty's Court: He the said Flestrin did, like a false Traitor, aid, abet, comfort, and divert the said Embassadors; although he knew them to be Servants to a Prince who was lately an open Enemy to his Imperial Majesty, and in open War against his said Majesty.

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Article IV

That the said Quinbus Flestrin, contrary to the Duty of a faithful Subject, is now preparing to make a Voyage to the Court and Empire of Blefuscu, for which he hath received only verbal Licence from his Imperial Majesty; and under Colour of the said Licence, doth falsely and traitorously intend to take the said Voyage, and thereby to aid, comfort, and abet the Emperor of Blefuscu, so late an Enemy, and in open War with his Imperial Majesty aforesaid.

There are some other Articles, but these are the most important, of which I have read an Abstract.

In the several Debates upon the Impeachment, it must be confessed that his Majesty gave many Marks of his great Lenity;often urging the Services you had done him, and endeavouring to extenuate your Crimes. The Treasurer and Admiral insisted that you should be put to the most painful and ignominious Death, by setting Fire on your House at Night; and the General was to attend with Twenty Thousand Men armed with poisoned Arrows, to shoot you on the Face and Hands. Some of your Servants were to have private Orders to strew a poisonous Juice on your Shirts and Sheets, which would soon make you tear your own Flesh, and die in the utmost Torture. The General came into the same Opinion; so that for a long time there was a Majority against you. But his Majesty resolving, if possible, to spare your life, at last brought off the Chamberlain.

Upon this Incident, Reldresal, principal Secretary for private Affairs, who always approved himself your true Friend, was commanded by the Emperor to deliver his Opinion, which he accordingly did; and therein justified the good Thoughts you have of him. He allowed your Crimes to be great; but that still there was

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room for Mercy, the most commendable Virtue in a Prince, and for which his Majesty was so justly celebrated. He said, the Friendship between you and him was so well known to the World, that perhaps the most honourable Board might think him partial: However, in Obedience to the Command he had received, he would freely offer his Sentiments. That if his Majesty, in Consideration of your Services, and pursuant to his own merciful Disposition,would please to spare your Life, and only give order to put out both your Eyes; he humbly conceived, that by this Expedient, Justice might in some measure be satisfied, and all the World would applaud the Lenity of the Emperor, as well as the fair and generous Proceedings of those who have the Honour to be his Counsellors. That the Loss of your Eyes would be no Impediment to your bodily Strength, by which you might still be useful to his Majesty. That Blindness is an Addition to Courage by concealing Dangers from us; that the Fear you had for your Eyes, was the greatest Difficulty in bringing over the Enemy's Fleet; and it would be sufficient for you to see by the Eyes of the Ministers, since the greatest Princes do no more.

This Proposal was received with the utmost Disapprobation by the whole Board. Bolgolam, the Admiral, could not preserve his Temper, but rising up in Fury, said, he wondered how the Secretary durst[2] presume to give his Opinion for preserving the Life of a Traytor: That the Services you had performed, were, by all true Reasons of State, the great Aggravation of your Crimes; that you, who were able to extinguish the Fire, by discharge of Urine in her Majesty's Apartment (which he mentioned with Horror) might at another time, raise an Inundation by the same Means, to drown the whole Palace; and the same Strength which enabled you to bring

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over the Enemy's Fleet, might serve, upon the first Discontent, to carry it back: That he had good Reasons to think you were a Big-Endian in your Heart; and as Treason begins in the Heart before it appears in Overt-Acts; so he accused you as a Traytor on that Account, and therefore insisted you should be put to death.

The Treasurer was of the same Opinion; he shewed[3] to what Streights his Majesty's Revenue was reduced by the Charge of maintaining you, which would soon grow insupportable: That the Secretary's Expedient of putting out your Eyes, was so far from being a Remedy against this Evil, that it would probably increase it; as it is manifest from the common Practice of blinding some Kind of Fowl, after which they fed the faster, and grew sooner fat: That his sacred Majesty, and the Council, who are your Judges, were in their own Consciences fully convinced of your Guilt; which was a sufficient Argument to condemn you to death, without the formal Proofs required by the strict Letter of the Law.

But his Imperial Majesty fully determined against capital Punishment, was graciously pleased to say, that since the Council thought the Loss of your Eyes too easy a Censure, some other may be inflicted hereafter. And your Friend the Secretary humbly desiring to be heard again, in Answer to what the Treasurer had objected concerning the great Charge his Majesty was at in maintaining you; said, that the Excellency, who had the sole Disposal of the Emperor's Revenue, might easily provide against this Evil, by gradually lessening your Establishment; by which, for want of sufficient Food, you would grow weak and faint, and lose your Appetite, and consequently decay and consume in a few Months; neither would the Stench of your Carcass be then so dangerous, when it should become more than half diminished; and immediately upon your

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Death, five or six Thousand of his Majesty's Subjects might, in two or three Days, cut your Flesh from your Bones, take it away by Cart-loads, and bury it in distant Parts to prevent Infection; leaving the Skeleton as a Monument of Admiration to Posterity.

Thus by the great friendship of the Secretary, the whole Affair was compromised. It was strictly enjoined, that the Project of starving you by Degrees should be kept a Secret; but the Sentence of putting out your Eyes was entered on the Books; none dissenting except Bolgolam the Admiral, who being a Creature of the Empress, was perpetually instigated by her Majesty to insist upon your Death; she having born perpetual Malice against you, on Account of that infamous and illegal Method you took to extinguish the Fire in her Apartment.

In three Days your Friend the Secretary will be directed to come to your House, and read before you the Articles of Impeachment; and then to signify the great Lenity and Favour of his Majesty and Council; whereby you are only condemned to the Loss of your Eyes, which his Majesty doth not question you will gratefully and humbly submit to; and Twenty of his Majesty's Surgeons will attend, in order to see the Operation well performed, by discharging very sharp pointed Arrows into the Balls of your Eyes, as you lie on the Ground.

I leave to your Prudence what Measures you will take; and to avoid Suspicion, I must immediately return in as private a manner as I came.

His Lordship did so, and I remained alone, under many Doubts and Perplexities of Mind. ...

At last I fixed upon a Resolution, for which it is probable I may incur some Censure, and not unjustly; for I confess I owe

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the preserving mine[4] Eyes, and consequently my Liberty, to my own great Rashness and Want of Experience: Because if I had then known the Nature of Princes and Ministers, which I have since observed in many other Courts, and their Methods of treating Criminals less obnoxious than myself; I should with great Alacrity and Readiness have submitted to so easy a Punishment. But hurried on by the Precipitancy of Youth; and having his Imperial Majesty's Licence to pay my Attendance upon the Emperor of Blefuscu; I took this Opportunity, before the three Days were elapsed, to send a Letter to my Friend the Secretary, signifying my Resolution of setting out that Morning for Blefuscu, pursuant to the Leave I had got; and without waiting for an Answer, I went to that Side of the Island where our Fleet lay. I seized a large Man of War, tied a Cable to the Prow, and lifting up the Anchors, I stript[5] myself, put my Cloaths (together with my Coverlet, which I carryed under my Arm) into the Vessel; and drawing it after me, between wading and swimming, arrived at the Royal Port of Blefuscu, where the People had long expected me.

Gulliver's Travels, by Jonathan Swift
New York, 1958; pp.44-50.

Notes:

1. and a copy of the Articles, wherein I venture my Head for your Service = şi un exemplar al acestor articole, astfel riscîndu-mi capul pentru a-ţi fi de folos.
2. durst = trecut de la dare (formă veche)
3. shewed = showed (formă veche)
4. mine = my (" ")
5. stript = stripped (" ")

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THE TRIAL

On the morning of his case, which was second in the list, Soames was again obliged to start without seeing Irene, and it was just as well[1], for he had not as yet made up his mind what attitude to adopt towards her.

He had been requested to be in court by half-past ten to provide against the event of the first action (a breach of promise) collapsing, which, however, it did not, both sides showing a courage that afforded Waterbuck, Q.C., an opportunity for improving his already great reputation in this class of case. He was opposed by Ram, the other celebrated breach of promise man. It was a battle of giants.

The Court delivered judgment just before the luncheon interval. The jury left the box for good[2], and Soames went out to get something to eat. ...

On returning to the court Soames took at once his rightful seat on the front bench beside his solicitor. He ascertained where his father was seated with a glance so sidelong as to commit nobody.

James, sitting back with his hands clasped over the handle of his umbrella, was brooding on the end of the bench immediately behind counsel, whence he could get away at once when the case was over. He considered Bosinney's conduct in every way outrageous, but he did not wish to run up against him, feeling that the meeting would be awkward.

Next to the Divorce Court, this court was, perhaps, the favourite emporium of justice, libel, breach of promise, and other

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commercial actions being frequently decided there. Quite a sprinkling of persons unconnected with the law occupied the back benches, and the hat of a woman or two could be seen in the gallery.

The two rows of seats immediately in front of James were gradually filled by barristers in wigs, who sat down to make pencil notes, chat, and attend to their teeth; but his interest was soon diverted from these lesser lights of justice by the entrance of Waterbuck, Q.C., with the wings of his silk gown rustling, and his red, capable face supported by two short, brown whiskers.The famous Q.C. looked, as James freely admitted, the very picture of a man who could heckle a witness.

For all his experience, it so happened that he had never seen Waterbuck, Q.C., before, and, like many Forsytes in the lower branch of the profession, he had an extreme admiration for a good cross-examiner. The long, lugubrious folds in his cheeks relaxed somewhat after seeing him, especially as he now perceived that Soames alone was represented by silk.

Waterbuck, Q.C., had barely screwed round on his elbow to chat with his Junior before Mr.Justice Bentham himself appeared - a thin, rather hen-like man, with a little stoop, clean-shaven under his snowy wig. Like all the rest of the court, Waterbuck rose, and remained on his feet until the Judge was seated. James rose but slightly; he was already comfortable, and had no opinion of Bentham, having sat next but one to him at dinner[3] twice at the Bumley Tomms'. Bumley Tomms was rather a poor thing, though he had been so successful. James himself had given him his first brief. He was excited, too, for he had just found out that Bosinney was not in court.

"Now, what's he mean by that?" he kept on thinking.

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The case having been called on, Waterbuck, Q.C., pushing back his papers, hitched his gown on his shoulder, and, with a semi-circular look around him, like a man who is going to bat, arose and addressed the court.

The facts, he said, were not in dispute, and all that his lordship would be asked was to interpret the correspondence which had taken place between his client and the defendant, an architect, with reference to the decoration of a house. He would, however, submit that this correspondence could only mean one very plain thing. After briefly reciting the history of the house at Robin Hill, which he described as a mansion, and the actual facts of expenditure, he went on as follows:

"My client, Mr.Soames Forsyte, is a gentleman, a man of property, who would be the last to dispute any legitimate claim that might be made against him, but he has met with such treatment from his architect in the matter of this house, over which he has, as your lordship has heard, already spent some twelve - some twelve thousand pounds, a sum considerably in advance of the amount he had originally contemplated, that as a matter of principle - and this I cannot too strongly emphasise - as a matter of principle, and in the interests of others, he has felt himself compelled to bring this action. The point put forward in defence by the architect I will suggest to your lordship is not worthy of a moment's serious consideration." He then read the correspondence.

His client, 'a man of recognised position', was prepared to go into the box, and to swear that he never did authorise, that it was never in his mind to authorise, the expenditure of any money beyond the extreme limit of twelve thousand and fifty pounds, which he had clearly fixed; and not further to waste the time of the court, he would at once call Mr.Forsyte.

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Soames then went into the box. His whole appearance was striking in its composure. His face, just supercilious enough, pale and clean-shaven, with a little line between the eyes, and compressed lips; his dress in unostentatious order, one hand neatly gloved, the other bare. He answered the questions put to him in a somewhat low but distinct voice. His evidence under cross-examination savoured of taciturnity.

"Had he not used the expression, 'a free hand' ? "

"No."

"Come, come!"

The expression he had used was 'a free hand in the terms of this correspondence'.

"Would he tell the court that that was English?"

"Yes!"

"What did he say it meant ?"

"What it said!"

"Was he prepared to deny that it was a contradiction in terms

"Yes."

"He was not an Irishman?"

"No."

"Was he a well-educated man?"

"Yes!"

"And yet he persisted in that statement?"

"Yes".

Throughout this and much more cross-examination, which turned again and again around the 'nice point', James sat with his hand behind his ear, his eyes fixed upon his son.

He was proud of him! He could not but feel that in similar circumstances he himself would have been tempted to enlarge his

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replies, but his instinct told him that this taciturnity was the very thing.[4] He sighed with relief, however, when Soames, slowly turning, and without any change of expression, descended from the box.

When it came to the turn of Bosinney's Counsel to address the Judge, James redoubled his attention, and he searched the court again and again to see if Bosinney were not somewhere concealed.

Young Chankery began nervously; he was placed by Bosinney's absence in an awkward position. He therefore did his best[5] to turn that absence to account.

He could not but fear - he said - that his client had met with an accident. He had fully expected him there to give evidence;they had sent round that morning both to Mr.Bosinney's office and to his rooms (though he knew they were one and the same, he thought it was as well not to say so), but it was not known where he was, and this he considered to be ominous, knowing how anxious Mr.Bosinney had been to give his evidence. He had not, however, been instructed to apply for an adjournment, and in default of[6] such instruction he conceived it his duty to go on. The plea on which he somewhat confidently relied, and which his client, had he not unfortunately been prevented in some way from attending, would have supported by his evidence, was that such an expression as a 'free hand' could not be limited, fettered, and rendered unmeaning, by any verbiage which might follow it. He would go further and say that the correspondence showed that whatever he might have said in his evidence, Mr. Forsyte had in fact never contemplated repudiating liability on any of the work ordered or executed by his architect. The defendant had certainly never contemplated such a contingency, or, as was demonstrated by his letters, he would never have proceeded with the

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work - a work of extreme delicacy, carried out with great care and efficiency, to meet and satisfy the fastidious taste of a connoisseur, a rich man, a man of property, He felt strongly on this point, and feeling strongly he used, perhaps, rather strong words when he said that this action was of a most unjustifiable, unexpected, indeed unprecedented character. If his lordship had had the opportunity that he himself had made it his duty to take, to go over this very fine house and see the great delicacy and beauty of the decorations executed by his client - an artist in his most honourable profession - he felt convinced that not for one moment would his lordship tolerate this, he would use no stronger word than, daring attempt to evade legitimate responsability. ...

He then argued the 'nice point' closely. With all due deference he submitted that Mr.Forsyte's expression nullified itself. His client not being a rich man, the matter was a serious one for him; he was a very talented architect, whose professional reputation was undoubtedly somewhat at stake[7]. He concluded with a perhaps too personal appeal to the Judge, as a lover of the arts, to show himself the protector of artists, from what was occasionally - he said occasionally - the too iron hand of capital. "What," he said, "will be the position of the artistic professions,if men of property like this Mr.Forsyte refuse, and are allowed to refuse, to carry out the obligations of the commissions which they have given." ... He would now call his client, in case he should at the last moment have found himself able to be present.

The name of Philip Baynes Bosinney was called three times by the ushers, and the sound of the calling echoed with strange melancholy throughout the court and galleries. ...

Behind the wooden plateau by which he was fenced from more

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ordinary mortals, the learned Judge leaned forward. The electric light, just turned on above his head, fell on his face, and mellowed it to an orange hue beneath the snowy crown of his wig; the amplitude of his robes grew before the eye; his whole figure, facing the comparative dusk of the court, radiated like some majestic and sacred body. He cleared his throat, took a sip of water, broke the nib of a quill against the desk, and, folding his bony hands before him, began. ...

He delivered judgment in the following words:

"The facts in this case are not in dispute. On May 15 last the defendant wrote to the plaintiff, requesting to be allowed to withdraw from his professional position in regard to the decoration of the plaintiff's house, unless he were given 'a free hand'. The plaintiff, on May 17, wrote back as follows: 'In giving you, in accordance with your request, this free hand, I wish you to clearly understand that the total cost of the house as handed over to me completely decorated, inclusive of your fee (as arranged between us) must not exceed twelve thousand pounds.' To this letter the defendant replied on May 18: 'If you think that in such a delicate matter as decoration I can bind myself to the exact pound, I am afraid you are mistaken.' On May 18 the plaintiff wrote as follows: 'I did not mean to say that if you should exceed the sum named in my letter to you by ten or twenty or even fifty pounds there would be any difficulty between us. You have a free hand in the terms of this correspondence, and I hope you will see your way to completing the decoration.' On May 20 the defendant replied thus shortly: 'Very well.'

"In completing these decorations, the defendant incurred liabilities and expenses which brought the total cost of this house

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up to the sum of twelve thousand four hundred pounds, all of which expenditure has been defrayed by the plaintiff. This action has been brought by the plaintiff to recover from the defendant the sum of three hundred and fifty pounds expended by him in excess of a sum of twelve thousand and fifty pounds, alleged by the plaintiff to have been fixed by this correspondence as the maximum sum that the defendant had authority to expend.

"The question for me to decide is whether or no the defendant is liable to refund to the plaintiff this sum. In my judgment he is so liable.

"What in effect the plaintiff has said is this: 'I give you a free hand to complete these decorations, provided that you keep within a total cost to me of twelve thousand pounds. If you exceed that sum by as much as fifty pounds, I will not hold you responsible; beyond that point you are no agent of mine, and I shall repudiate liability.' It is not quite clear to me whether, had the plaintiff in fact repudiated liability under his agent's contracts, he would, under all the circumstances, have been successful in so doing, but he has not adopted this course. He has accepted liability, and fallen back upon his rights against the defendant under the terms of the latter's engagement.

"In my judgment the plaintiff is entitled to recover this sum from the defendant.

"It has been sought, on behalf of the defendant, to show that no limit of expenditure was fixed or intended to be fixed by this correspondence. If this were so, I can find no reason for the plaintiff's importation into the correspondence of the figures of twelve thousand pounds and subsequently of fifty pounds. The

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defendant's contention would render these figures meaningless. It is manifest to me that by his letter of May 20 he assented to a very clear proposition, by the terms of which he must be held to be bound.

"For these reasons there will be judgment for the plaintiff for the amount claimed with costs."

The Forsyte Saga, by John Galsworthy
pp. 232-239
Heinemann, 1963

Notes

1. and it was just as well = şi asta a fost cît se poate de bine.
2. the jury left the box for good = juraţii au părăsit boxa definitiv.
3. he... had no opinion of Bentham, having sat next but one to him at dinner... =el... avea o părere proastă despre Bentham, cunoscîndu-l, căci stătuse la masă alături de el, despărţit doar de un singur comesean...
4. the very thing = exact ceea ce trebuie
5. he did his best = a făcut tot ce i-a stat în putinţă
6. in default of = în lipsa...
7. whose professional reputation was... at stake = a cărui reputaţie profesional era... în joc.

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THE WEST END HOUSE LIMITED CASE

Matheson lit his cigarette and sighed gently: he had got through life by an attitude of diplomatic procrastination, having learnt early that most problems solve themselves in time and that longevity feeds even the most idle ambition. 'Well, lad,' he said, what's in that nasty looking file you've got there?'

Gerson at last put the file on the desk. 'West End House Limited,' he said. 'Do you remember the case, sir? We advanced £ 52,000 in 1946. The security was a block of shops and furnished flatlets with a restaurant in Abercrombie Street, London, W.1., It had been requisitioned by the Ministry of Aircraft Production during the war and on derequisitioning it was sold by the former owners to West End House Limited, a new company formed for the purpose of acquiring it.'

'I remember,' said Matheson. '1946 was it? Doesn't the time flash by?'

'Yes, sir.' Gerson paused a moment to allow this philosophical reflection of the General Manager's to sink in, then coughed discreetly and continued. 'The mortgage provided for the advance to be repaid at the rate of £ 2,500 per annum, by quarterly instalments - after the first two years at interest only. We've had a little trouble with the last few instalments and now' - Gerson opened the file suddenly for his little effect of drama - 'the company has written asking us to suspend capital repayments.'

'Hm,' said Matheson, non-committally.

'Of course, I asked them for their latest accounts and details

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of the letting of the building. They're not too good, I'm afraid. Taking the lettings first; it seems that the restaurant is vacant - '

'Vacant!' said the General Manager, actually leaning forward a little in his chair.

'The company that was running it has gone into liquidation and the liquidator is expected to disclaim the lease. And then some of the shops are empty.'

'This sounds like rank bad management,' said the General Manager.

'Yes, sir. The residential accomodation seems to be fairly fully occupied, but there are a number of tenants in arrears.[1] And that brings me to the company's accounts. It's grossly overcapitalized, so that without the restaurant rent and some of the shop rents it couldn't possibly continue trading. It would barely tick over if the premises were fully let[2]: originally there was clearly too optimistic an estimate made of the rental value of the non-residential units. The company issued a debenture in --'

'Wait a bit,' said Matheson, detesting this flood of what he called technicalities. 'Just let's look at the society's position. What's the present mortgage debt ?'

'£ 47,750 plus interest.'

'And what was the purchase price when the company bought ?'

'£ 72,000 for the freehold. And they paid £ 7,500 for the furniture, fittings, and so forth.'

'And the society's valuation at the time ?'

'£ 70,000, excluding the contents.'

Matheson smiled: 'Well, it doesn't look too bad, Gerson.'

Gerson felt that the position he had taken up was under

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assault. 'I wanted particularly to draw your attention to the schedule of lettings. On that basis --'

'Suppose at the worst,' interrupted the General Manager, 'that the society has to sell. There's a margin between mortgage debt and valuation of -- um -- £ 25,000 in our favour.'

'£ 24,250,' said Gerson.

'Yes,' said Matheson. 'Well, that's a decent bit of slack, lad.'[3]

The Accounts Manager determinedly drove his spectacles against the bridge of his thin nose. 'No, sir. I'm afraid I have to disagree there. I don't see how a valuation of £ 70,000 could possibly be justified on that schedule of lettings. I know I'm only an accountant, not a surveyor, but those figures speak for themselves, sir.'

'Do you mean the society over-valued?'

Gerson became cautious. 'I don't know how the revenue position of that building was presented to us in 1946.'

'Damn it, lad, even if we over-valued by £ 10,000 there's still a margin of --' The General Manager looked up at the ceiling and moved his lips silently.

'£ 14,250,' supplied Gerson.

'That should take care of any accidents,' Matheson passed his hand over his sleek silver head. 'You still don't look very happy.'

'I'm not, sir,' said Gerson.

'Come along, then: what do you think the present value of the place is ?'

Gerson shifted the file a little. '£ 35,000 ?' he said, questioningly.

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'£ 35,000 ! With a mortgage debt of £ 45,000 !' Matheson was shaken.

'£ 45,750 and the current interest,' said the other automatically.

The General Manager stared at Gerson with his clear blue eyes, as though exorcising an unpleasant optical illusion. 'Well,' he said eventually, 'I hope to God you're wrong.'

'I hope I am, sir,' said Gerson, complacent at having at length justified his work on the file, his appointment with Matheson, his patient approach.

'Of course, I'll have to put this request for a suspension of capital repayments before the directors.'

'Yes, sir.'

'See that it goes on the agenda for the next Board.'[4]

'Yes, sir.'

'And before then we shall want an up-to-date valuation of the place. Blackledge will arrange for it -- consult with him on that, will you, Gerson ?'

'Yes, sir.'

At this moment the General Manager's secretary entered with a little tray bearing Matheson's mid-morning pot of coffee and a plate of chocolate biscuits.

'Thank you, Doris,' said the General Manager as the tray was put conveniently on the desk to his right hand. Even in this moment he observed with satisfaction that the biscuits this morning were coated with milk chocolate. He stole a glance at the Daily Mail to confirm it was still there to accompany the coffee-drinking rite. All he had to do to enjoy the next twenty minutes was to dismiss Arnold Gerson.

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'Well, Gerson, I think that's about it,' said the General Manager. ...

The Vice-Chairman took off the mean little spectacles he wore for reading and said, without emphasis: "Your valuation is slightly above half what it was in 1946, Blackledge?'

'If you read the beginning of my report, Sir Harold,' Blackledge began.

'I don't pretend to understand the science of valuation -- or is in an art ?-- but I do know a little about figures. £ 33,000 has apparently vanished into thin air.'[5]

'No, Sir Harold, the society only stands to lose --'

'I know that, man,' Sir Harold spoke testily for the first time, and the colour leapt to Blackledge's face. '£ 8,750 with the current interest -- if your valuation is to be relied on.'

'I'm sorry, Sir Harold. I thought you were referring to the difference --'

Sir Harold interrupted him again. 'What the Board will want to know, Blackledge, is how you and Powell in 1946 arrived at what seems now to be the astronomical figure of £ 70,000 as the value of the freehold.'

'Well, Sir Harold, the company paid £ 72,000 --'

'I never thought that purchase price had more than an adventitious relationship to value,' said Sir Harold. 'But this is hardly the time for generalizations: you will have to try to make your peace with the Board at a later date, Blackledge.'

The bastard, Blackledge was thinking: the smug bastard. ... He had never, since some catastrophic escapades of his schooldays, been in this embarrassed, indefensible, oppressed predicament. He had gone to London, enjoyed the luxury of the Pullman and the hotel,

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met the deferential Powell. He had been somewhat astonished at what he had found at West End House, rather more astonished when he and Powell had arrived at their valuation figure, but even then he had regarded the decline as an inevitable result of post-war conditions and ill-management. It was not until he had sat down at this conference and seen the papers in front of Sir Harold's unfriendly brown eyes that he began to realize the extent of his own responsability. During the last quarter of an hour the realization had grown to a monstrous and horrifying size and it was no longer possible to escape the conclusion that the original valuation(Powell's share in which he must also shoulder) was a grave error of judgement... It was intolerable - nightmarishly unbelievable - that this should happen to a man in his position.

'If the society ever has to realize this security,' the Vice-Chairman was saying to the room at large, 'on these figures the loss will be of such a magnitude that we can't possibly let it appear silently in the accounts. The shareholders will have to be told of it explicitly at the annual general meeting, and given a full and proper explanation.'

Everyone was silent, thinking of the covert jubilation and even the direct jibes of the Saddleford's rivals in the building society movement, at such a public admission of sin. They thought, too, of an officious and offensive shareholder called Jones Barlow who made a point of asking difficult questions at annual general meetings even about innocent and prosperous accounts.

'It doesn't therefore,' Sir Harold continued, 'need me to emphasize that our aim must be to avoid realization. We must watch over the company's affairs, try to ensure that it vastly improves its standard of management of this property. After all, the build-

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ing is in the West End where there's plenty of brass about: there is absolutely no reason why any part of it should be empty.'

Blackledge began to sweat afresh until he realized that he was the only man in the room who understood that, despite its name and the postal number of its address, West End House was not in the West End. It was, not to put too fine a point on it, in Paddington, in a district quite unattractive to those who might wish to live and eat at fair expense. This was something, he had to confess to himself, that he had quite failed to understand in 1946.

'The directors of the company must be gee'd up,' said Sir Harold. 'Someone from here must sit in at their meetings until they've put matters on a proper basis. They'll respond, I feel sure, especially when it's forcibly pointed out to them that they stand to pay over £ 8,000 out of their own pockets.'

''£ 8,000 out of their own pockets,' repeated Gerson questioningly and apologetically.

'As guarantors of the society's mortgage,' said Sir Harold with ostensible patience.

'They are not guarantors, I'm afraid, Sir Harold,' said Gerson.

Sir Harold tested the strength of his chair. 'Who <u>are</u> the guarantors, then ?'

'There are none,' said Gerson, looking at the General Manager.

Matheson roused himself. 'There are no guarantors in this case, Sir Harold,' he said needlessly.

'I don't understand,' said the Vice-Chairman, in a choked voice. 'Is it not the society's practice in the case of an advance to a company to require the directors of the company to join in the mortgage deed and give their personal covenants to repay the advance and interest ?'

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'Yes, Sir Harold,' said Matheson ingratiatingly, 'but in this particular mortgage the society apparently thought itself sufficiently secured with the property and waived the requirement of the directors' covenants.'

The Vice-Chairman laughed ironically.

'The advance was authorized by the Board itself,' put in Blackledge.

'Then I must have been absent. I certainly would never have lowed the directors to escape their proper obligations.'

The silence fell again.

'Who are these unfortunate gentlemen?' asked the Vice-Chairman.

Gerson said: 'Mr Douglas Black. Mrs Black. Mr Sikowski. They are the London directors, one may say. And lastly Mr Cecil Hepworth.'

'Hepworth?' said Sir Harold. 'He's a local man, isn't he? ' He turned accusingly to Blackledge. 'He's the friend of yours who wants to borrow money on flats.'

'Yes, Sir Harold,' said Blackledge, feeling his colour rise again and recalling vividly that awful and disastrous day in 1946 when he had said to Cecil Hepworth: I'll see that we shan't require your guarantee, old man.

'He'll never have another penny piece out of this society as long as I'm alive,'[6] said the Vice-Chairman. He turned to the General Manager. 'Matheson, the Board will want a full statement about the company's affairs.'

'Yes, Sir Harold.' Matheson relaxed a little, visualizing at last the end of this terrible meeting.

Image of a Society, by Roy Fuller
pp. 98-114
Penguin, 1956

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Notes

1. The residential accommodation seems to be fairly fully occupied, but there are a number of tenants in arrears = spaţiul de locuit pare să fie ocupat aproape în întregime, dar sînt o serie de locatari în restanţă cu chiria.
2. It would barely tick over if the premises were fully let = abia dacă ar duce-o de azi pe mîine, dacă locuinţele ar fi în întregime închiriate.
3. Well, that's a decent bit of slack, lad = ei, asta-i o marjă bunicică, băiete.
4. See that it goes on the agenda for the next Board = ai grijă ca această problemă să fie inclusă pe ordinea de zi a următorului Consiliu de Administraţie.
5. £ 33,000 has apparently vanished into thin air = după cum s-ar părea, 33.000 de lire s-au dus pe apa sîmbetei
6. He'll never have another penny piece out of this society as long as I'm alive = nu mai vede el un ban de la firma asta cît voi trăi eu.

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A N S W E R

... Dewey is driving the lead car, Perry Smith sits beside him, and Duntz is sitting in the back seat. Smith is handcuffed, and the handcuffs are attached to a security belt by a short length of chain - an arrangement so restricting his movements that he cannot smoke unaided. When he wants a cigarette, Dewey must light it for him and place it between his lips, a task that the detective finds "repellent", for it seems such an intimate action - the kind of thing he'd done while he was courting his wife.

On the whole, the prisoner ignores his guardians and their sporadic attempts to goad him by repeating parts of Hickock's hour-long tape-recorded confession: "He says he tried to stop you, Perry. But says he couldn't. Says he was scared you'd shoot him too," and "Yes, sir, Perry. It's all your fault. Hickock himself, he says he wouldn't harm the fleas on a dog." None of this - outwardly, at any rate - agitates Smith.

. . . . . .

Dewey, not anticipating any exceptional response, says, "Hickock tells us you're a natural-born killer. Says it doesn't bother you a bit. Says one time out there in Las Vegas you went after a colored man with a bicycle chain. Whipped him to death. For fun."

To Dewey's surprise, the prisoner gasps. He twists around in his seat until he can see, through the rear window, the motorcade's second car, see inside it: "The tough boy!" Turning back,

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he stares at the dark streak of desert highway. "I thought it was a stunt. I didn't believe you. That Dick let fly.[1] The tough boy! Oh, a real brass boy. Wouldn't harm the fleas on a dog. Just run over the dog." He spits. "I never killed any nigger."[2] Duntz agrees with him; having studied the files on unsolved Las Vegas homicides, he knows Smith to be innocent of this particular deed. "I never killed any niggers. But he thought so. I always knew if we ever got caught, if Dick ever really let fly, ... I knew he'd tell about the nigger." He spits again. "So Dick was afraid of me? That's amusing. I'm very amused. What he don't know is, I almost did shoot him."

Dewey lights two cigarettes, one for himself, one for the prisoner. "Tell us about it, Perry." ... "Well, it all started with a letter I got while I was out in Buhl, Idaho. That was September or October. The letter was from Dick, and he said he was on to a cinch. The perfect score.[3] I didn't answer him, but he wrote again, urging me to come back to Kansas and go partners with him. He never said what kind of score it was. Just that it was a 'sure-fire cinch,' Now, as it happened, I had another reason for wanting to be in Kansas around about that time. A personal matter I'd just as soon keep to myself - it's got nothing to do with this deal. Only that otherwise I wouldn't have gone back there. But I did. And Dick met me at the bus station in Kansas City. We drove out to the farm, his parents' place. But they didn't want me there. I'm very sensitive; I usually know what people are feeling.

"Like you." He means Dewey, but does not look at him. "You hate handing me a butt. That's your business. I don't blame you. Any more than I blamed Dick's mother. The fact is, she's a very

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sweet person. But she knew what I was - a friend from The Walls[4] - and she didn't want me in her house. Christ, I was glad to get out, go to a hotel. Dick took me to a hotel in Olathe. We bought some beer and carried it up to the room, and that's when Dick outlined what he had in mind. He said after I'd left Lansing he celled with someone[5] who'd once worked for a wealthy wheat grower out in western Kansas. Mr.Clutter. Dick drew me a diagram of the Clutter house. He knew where everything was - doors,halls, bedrooms. He said one of the ground-floor rooms was used as an office, and in the office there was a safe - a wall safe. He said Mr. Clutter needed it because he always kept on hand large sums of cash. Never less than ten thousand dollars. The plan was to rob the safe, and if we were seen - well, whoever saw us would have to go. Dick must have said it a million times: "No witnesses." ... Duntz says, "Hold on, Perry. You're jumping ahead. Go back to Olathe. What time did you leave there?"

"One. One-thirty. We left just after lunch and drove to Emporia. Where we bought some rubber gloves and a roll of cord. The knife and shotgun, the shells - Dick had brought all that from home. ... So we didn't stop again till Great Bend. That's where we bought the tape. Had dinner there, a big dinner. It put me to sleep. When I woke up, we were just coming into Garden City. Seemed like a real dead-dog town. We stopped for gas at a filling station --"

Dewey asks if he remembers which one.

"Believe it was a Phillips 66."

"What time was this?"

"Around midnight. Dick said it was seven miles more to Holcomb. All the rest of the way, he kept talking to himself,saying this ought to be here and that ought to be there -- according

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to the instructions he'd memorized. I hardly realized it when we went through Holcomb, it was such a little settlement. We crossed a railroad track. Suddenly Dick said, 'This is it, this has to be it.' It was the entrance to a private road, lined with trees. We slowed down and turned off the lights. Didn't need them. Account of the moon. There wasn't nothing else up there - not a cloud, nothing. Just that full moon. It was like broad day, and when we started up the road, Dick said, 'Look at this spread! The barns! That house! Don't tell me this guy ain't loaded.[6] But I didn't like the setup, the atmosphere; it was sort of too impressive. We parked in the shadows of a tree. While we were sitting there, a light came on - not in the main house but a house maybe a hundred yards to the left. Dick said it was the hired man's house;he knew because of the diagram. But he said it was a damn sight nearer the Clutter house than it was supposed to be. Then the light went off. Mr.Dewey -- the witness you mentioned. Is that who you meant - the hired man?"

"No. He never heard a sound. But his wife was nursing a sick baby. He said they were up and down the whole night."

"A sick baby. Well, I wondered. While we were still sitting there, it happened again - a light flashed on and off. And that really put bubbles in my blood. I told Dick to count me out.[7] If he was determined to go ahead with it, he'd have to do it alone. He started the car, we were leaving, and I thought, Bless Jesus. I've always trusted my intuitions; they've saved my life more than once. But halfway down the road Dick stopped. He was sore as hell.[8] I could see he was thinking. Here I've set up this big score,here we've come all this way, and now this punk wants to chicken out.[9] He said, 'Maybe you think I ain't[10] got the guts to do it alone.[11]

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But, my God, I'll show you who's got guts.' There was some liquor in the car. We each had a drink, and I told him, 'O.K., Dick. I'm with you.' So we turned back. Parked where we had before. In the shadows of a tree. Dick put on gloves; I'd already put on mine. He carried the knife and a flashlight. I had the gun. The house looked tremendous in the moonlight. Looked empty. I remember hoping there was nobody home --"

Dewey says, "But you saw a dog?"

"No."

"The family had an old gun-shy dog.[12] We couldn't understand why he didn't bark. Unless he'd seen a gun and bolted."...

"The door was unlocked. A side door. It took us into Mr.Clutter's office. Then we waited in the dark. Listening. But the only sound was the wind. There was quite a little wind outside. It made the trees move, and you could hear the leaves. The one window was curtained with Venetian Blinds, but moonlight was coming through. I closed the blinds, and Dick turned on his flashlight. We saw the desk. The safe was supposed to be in the wall directly behind the desk, but we couldn't find it. It was a paneled wall, and there were books and framed maps, and I noticed, on a shelf, a terrific pair of binoculars. I decided I was going to take them with me when we left there."

"Did you?" asks Dewey, for the binoculars had not been missed.

Smith nods. "We sold them in Mexico."

"Sorry. Go on."

"Well, when we couldn't find the safe, Dick doused the flashlight and we moved in darkness out of the office and across a parlor, a living room. ... We came to a hall and a door,and Dick,

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remembering the diagram, said it was a bedroom. He shined the flashlight and opened the door. A man said, 'Honey?' He'd been asleep, and he blinked and said, 'Is that you, honey?' Dick asked him, 'Are you Mr.Clutter?' He was wide awake now; he sat up and said, 'Who is it? What do you want?' Dick told him, very polite, like we were a couple of door-to-door salesmen,[13] 'We want to talk to you, sir. In your office, please.' And Mr.Clutter, barefoot, just wearing pajamas, he went with us to the office and we turned on the office lights.

"Up till then he hadn't been able to see us very good. I think what he saw hit him hard. Dick says, 'Now, sir, all we want you to do is show us where you keep that safe.' But Mr.Clutter says, 'What safe?' He says he don't[14] have any safe. I knew right then it was true. He had that kind of face. You just knew whatever he told you was pretty much the truth. But Dick shouted at him, 'Don't lie to me, you sonofabitch![15] I know goddam well you got a safe!' My feeling was nobody had ever spoken to Mr. Clutter like that. But he looked Dick straight in the eyes and told him, being very mild about it -- said, well, he was sorry but he just didn't have any safe. Dick tapped him on the chest with the knife, says, 'Show us where that safe is or you're gonna[16] be a good bit sorrier.' But Mr.Clutter -- oh, you could see he was scared, but his voice stayed mild and steady - he went on denying he had a safe.

"Sometime along in there, I fixed his telephone. The one in the office. I ripped out the wires. And I asked Mr.Clutter if there were any other telephones in the house. He said yes, there was one in the kitchen. So I took the flashlight and went to the kitchen - it was quite a distance from the office. When I found the telephone, I removed the receiver and cut the line with a pair of

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pliers. Then, heading back, I heard a noise. A creaking overhead. I stopped at the foot of the stairs leading to the second floor. It was dark, and I didn't dare use the flashlight. But I could tell there was someone there. At the top of the stairs, silhouetted against a window. A figure. Then it moved away."

Dewey imagines it must have been Nancy. He'd often theorized, on the basis of the gold wristwatch found tucked in the toe of a shoe in her closet, that Nancy had wakened, heard persons in the house, thought they might be thieves, and prudently hidden the watch, her most valuable property.

"For all I knew, maybe it was somebody with a gun. But Dick wouldn't even listen to me. He was so busy playing tough boy. Bossing Mr.Clutter around. Now he'd brought him back to the bedroom. He was counting the money in Mr.Clutter's billfold. There was about thirty dollars. He threw the billfold on the bed and told him, 'You've got more money in this house than that. A rich man like you. Living on a spread like this.' Mr.Clutter said that was all the cash he had, and explained he always did business by check. He offered to write us a check. Dick just blew up... and I thought Dick was ready to smash him, so I said, 'Dick. Listen to me. There's somebody awake upstairs.' Mr.Clutter told us the only people upstairs were his wife and a son and daughter. Dick wanted to know if the wife had any money, and Mr.Clutter said if she did, it would be very little, a few dollars, and he asked us - really kind of broke down - please not to bother her, because she was an invalid, she'd been very ill for a long time. But Dick insisted on going upstairs. He made Mr.Clutter lead the way.

"At the foot of the stairs, Mr.Clutter switched on lights that lighted the hall above, and as we were going up, he said, 'I don't know why you boys want to do this. I've never done you

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any harm. I never saw you before.' That's when Dick told him, 'Shut up! When we want you to talk, we'll tell you.' Wasn't anybody in the upstairs hall, and all the doors were shut. Mr.Clutter pointed out the rooms where the boy and girl were supposed to be sleeping, then opened his wife's door. He lighted a lamp beside her bed and told her, 'It's all right, sweetheart. Don't be afraid. These men, they just want some money.' She was a thin, frail sort of woman in a long white nightgown. The minute she opened her eyes, she started to cry. She says, talking to her husband, 'Sweetheart, I don't have any money.' He was holding her hand, patting it. He said, 'Now, don't cry, honey. It's nothing to be afraid of. It's just I gave these men all the money I had, but they want some more. They believe we have a safe somewhere in the house. I told them we don't.' Dick raised his hand, like he was going to crack him across the mouth. Says, 'Didn't I tell you to shut up?' Mrs.Clutter said, 'But my husband's telling you the God's truth. There isn't any safe.' And Dick answers back, 'I know goddam well you got a safe. And I'll find it before I leave here. Needn't worry that I won't.' Then he asked her where she kept her purse. The purse was in a bureau drawer. Dick turned it inside out. Found just some change and a dollar or two. I motioned to him to come into the hall. I wanted to discuss the situation. So we stepped outside, and I said --"

Duntz interrupts him to ask if Mr.and Mrs.Clutter could overhear the conversation.

"No. We were just outside the door, where we could keep an eye on them. But we were whispering. I told Dick, 'These people are telling the truth. The one who lied is your friend Floyd Wells. There isn't any safe, so let's get the hell out of here.'[17] But Dick was too ashamed to face it. He said he wouldn't believe it

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till we searched the whole house. He said the thing to do was tie them all up, then take our time looking around. You couldn't argue with him, he was so excited. The glory of having everybody at his mercy, that's what excited him. Well, there was a bathroom next door to Mrs.Clutter's room. The idea was to lock the parents in the bathroom, and wake the kids and put them there, then bring them out one by one and tie them up in different parts of the house. And then, says Dick, after we've found the safe, we'll cut their throats. Can't shoot them, he says - that would make too much noise."

Perry frowns, rubs his knees with his manacled hands. "Let me think a minute. Because along in here things begin to get a little complicated. I remember. Yes. Yes, I took a chair out of the hall and stuck it in the bathroom. So Mrs.Clutter could sit down. Seeing she was said to be an invalid. When we locked them up, Mrs.Clutter was crying and telling us, 'Please don't hurt anybody. Please don't hurt my children.' And her husband had his arms around her, saying, like, 'Sweetheart, these fellows don't mean to hurt anybody. All they want is some money.'

"We went to the boy's room. He was awake. Lying there like he was too scared to move. Dick told him to get up, but he didn't move, or move fast enough, so Dick punched him, pulled him out of bed, and I said, 'You don't have to hit him, Dick.' And I told the boy - he was only wearing a T-shirt - to put on his pants. He put on a pair of blue jeans, and we'd just locked him in the bathroom when the girl appeared - came out of her room. She was all dressed, like she'd been awake some while. I mean, she had on socks and slippers, and a kimono, and her hair was wrapped in a bandanna. She was trying to smile. She said, 'Good grief, what is this? Some kind of joke?' I don't guess she thought it was much of a

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joke, though. Not after Dick opened the bathroom door and shoved her in..."

Dewey envisions them: the captive family, meek and frightened but without any premonition of their destiny. Herb couldn't have suspected, or he would have fought. He was a gentleman but strong and no coward. Herb, his friend Alvin Dewey felt certain, would have fought to the death defending Bonnie's life and the lives of his children.

"Dick stood guard outside the bathroom door while I reconnoitered. I frisked the girl's room, and I found a little purse - like a doll's purse. Inside it was a silver dollar. I dropped it somehow, and it rolled across the floor. Rolled under a chair. I had to get down on my knees. And just then it was like I was outside myself. Watching myself in some nutty movie. It made me sick. I was just disgusted. Dick, and all his talk about a rich man's safe, and here I am crawling on my belly to steal a child's silver dollar. One dollar. And I'm crawling on my belly to get it."

Perry squeezes his knees, asks the detectives for aspirin, thanks Duntz for giving him one, chews it, and resumes talking. "But that's what you do. You get what you can. I frisked the boy's room, too. Not a dime. But I remembered the binoculars I'd seen in Mr.Clutter's office. I went downstairs to get them. I carried the binoculars and the radio out to the car. It was cold, and the wind and the cold felt good. The moon was so bright you could see for miles. And I thought, Why don't I walk off? Walk to the highway, hitch a ride.[18] I sure Jesus didn't want to go back in that house. And yet - How can I explain this? It was like I wasn't part of it. More as though I was reading a story. And I had to know

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what was going to happen. The end. So I went back upstairs. And now, let's see -- uh-huh, that's when we tied them up. Mr.Clutter first. We called him out of the bathroom, and I tied his hands together. Then I marched him all the way down to the basement --"

Dewey says, "Alone and unarmed?"

"I had the knife."

Dewey says, "But Hickock stayed guard upstairs?"

"To keep them quiet. Anyway, I didn't need help. I've worked with rope all my life."

Dewey says, "Were you using the flashlight or did you turn on the basement lights?"

"The lights. The basement was divided into two sections. One part seemed to be a playroom. Took him to the other section, the furnace room. I saw a big cardboard box leaning against the wall. A mattress box. Well, I didn't feel I ought to ask him to stretch out on the cold floor, so I dragged the mattress box over, flattened it, and told him to lie down."

The driver, via the rear-view mirror, glances at his colleague, attracts his eye, and Duntz slightly nods, as if in tribute. All along Dewey had argued that the mattress box had been placed on the floor for the comfort of Mr.Clutter, and taking heed of similar hints, other fragmentary indications of ironic, erratic compassion, the detective had conjectured that at least one of the killers was not altogether uncharitable.

"I tied his feet, then tied his hands to his feet. I asked him was it too tight, and he said no, but said would we please leave his wife alone. There was no need to tie her up - she wasn't going to holler or try to run out of the house. He said she'd been sick for years and years, and she was just beginning to get a little better, but an incident like this might cause her to have

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a setback. I know it's nothing to laugh over, only I couldn't help it - him talking about a 'setback.'

"Next thing, I brought the boy down. Firt I put him in the room with his dad. Tied his hands to an overhead steampipe. Then I figured that wasn't very safe. He might somehow get loose and undo the old man, or vice versa. So I cut him down and took him to the playroom, where there was a comfortable-looking couch. I roped his feet to the foot of the couch, roped his hands, then carried the rope up and made a loop around his neck, so if he struggled he'd choke himself. Once, while I was working, I put the knife down on this -- well, it was a freshly varnished cedar chest; the whole cellar smelled of varnish -- and he asked me not to put my knife there. The chest was a wedding present he'd built for somebody. A sister, I believe he said. Just as I was leaving, he had a coughing fit, so I stuffed a pillow under his head. Then I turned off the lights--"

Dewey says, "But you hadn't taped their mouths?"

"No. The taping came later, after I'd tied both the women in their bedrooms. Mrs.Clutter was still crying, at the same time she was asking me about Dick. She didn't trust him, but said she felt I was a decent young man. I'm <u>sure</u> you are, she says, and made me promise I wouldn't let Dick hurt anybody. I think what she really had in mind was her daughter. I was worried about that myself, I suspected Dick was plotting something, something I wouldn't stand for. When I finished tying Mrs.Clutter, sure enough,I found he'd taken the girl to her bedroom. She was in the bed, and he was sitting on the edge of it talking to her. I stopped that; I told him to go look for the safe while I tied her up. After he'd gone, I roped her feet together and tied her hands behind her back.Then I pulled up the covers, tucked her in till just her head showed.

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There was a little easy chair next the bed, and I thought I'd rest a minute; my legs were on fire -- all that climbing and kneeling. I asked Nancy if she had a boy friend. She said yes, she did. She was trying hard to act casual and friendly. I really liked her. She was really nice. A very pretty girl, and not spoiled or anything. She told me quite a lot about herself. About school,and how she was going to go to a university to study music and art.Horses. Said next to dancing what she liked best was to gallop a horse, so I mentioned my mother had been a champion rodeo rider.

"And we talked about Dick; I was curious, see, what he'd been saying to her. Seems she'd asked him why he did things like this. Rob people. And, now, did he toss her a tearjerker -- said he'd been raised an orphan in an orphanage, and how nobody had ever loved him, and his only relative was a sister who lived with men without marrying them. All the time we were talking, we could hear the lunatic roaming around below, looking for the safe. Looking behind pictures. Tapping the walls. Tap tap tap. Like some nutty woodpecker. When he came back, just to be a real bastard I asked had he/found it. Course he hadn't, but he said he'd come across another purse in the kitchen. With seven dollars."

Duntz says, "How long now had you been in the house?"

"Maybe an hour."

Duntz says, "And when did you do the taping?"

"Right then. Started with Mrs.Clutter. I made Dick help me -- because I didn't want to leave him alone with the girl. I cut the tape in long strips, and Dick wrapped them around Mrs. Clutter's head like you'd wrap a mummy. He asked her, 'How come you keep on crying? Nobody's hurting you,' and he turned off the bedside lamp and said, 'Good night, Mrs.Clutter. Go to sleep.' ...

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"And we never used the lights again. Except the flashlight. Dick carried the flashlight when we went to tape Mr.Clutter and the boy. Just before I taped him, Mr.Clutter asked me -- and these were his last words -- wanted to know how his wife was, if she was all right, and I said she was fine, she was ready to go to sleep, and I told him it wasn't long till morning, and how in the morning somebody would find them, and then all of it, me and Dick and all, would seem like something they dreamed. I wasn't kidding him. I didn't want to harm the man. I thought he was a very nice gentleman. Soft-spoken. I thought so right up to the moment I cut his throat.

"Wait. I'm not telling it the way it was." Perry scowls. He rubs his legs; the handcuffs rattle. "After, see, after we'd taped them, Dick and I went off in a corner. To talk it over. Remember, now, there were hard feelings between us. Just then it made my stomach turn to think I'd ever admired him, lapped up all that brag. I said, 'Well, Dick. Any qualms?' He didn't answer me. I said, 'Leave them alive, and this won't be any small rap. Ten years the very least.' He still didn't say anything. He was holding the knife. I asked him for it, and he gave it to me, and I said, 'All right, Dick. Here goes.' But I didn't mean it. I meant to call his bluff, make him argue me out of it, make him admit he was a phony and a coward. See, it was something between me and Dick. I knelt down beside Mr.Clutter, and the pain of kneeling -- I thought of that goddam dollar. Silver dollar. The shame.Disgust. And they'd told me never to come back to Kansas. But I didn't realize what I'd done till I heard the sound. Like somebody drowning. Screaming under water. I handed the knife to Dick. I said, 'Finish him. You'll feel better.' Dick tried -- or pretended to. But the man had the strength of ten men -- he was half out of his

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ropes, his hands were free. Dick panicked. Dick wanted to get the hell out of there. But I wouldn't let him go. The man would have died anyway, I know that, but I couldn't leave him like he was. I told Dick to hold the flashlight, focus it. Then I aimed the gun. The room just exploded. Went blue. Just blazed up. Jesus, I'll never understand why they didn't hear the noise twenty miles around."

Dewey's ears ring with it -- a ringing that almost deafens him to the whispery rush of Smith's soft voice. But the voice plunges on, ejecting a fusillade of sounds and images: Hickock hunting the discharged shell; hurrying, hurrying, and Kenyon's head in a circle of light, the murmur of muffled pleadings,then Hickock again scrambling after a used cartridge; Nancy's room, Nancy listening to boots on hardwood stairs, the creak of the steps as they climb toward her, Nancy's eyes, Nancy watching the flashlight's shine seek the target ("She said, 'Of, no! Oh,please. No! No! No! No! Don't! Oh, please don't! Please!' I gave the gun to Dick. I told him I'd done all I could do. He took aim, and she turned her face to the wall"); the dark hall, the assassins hastening toward the final door. Perhaps, having heard all she had, Bonnie welcomed their swift approach.

"That last shell was a bitch to locate.[19] Dick wiggled under the bed to get it. Then we closed Mrs.Clutter's door and went downstairs to the office. We waited there, like we had when we first came. Looked through the blinds to see if the hired man was poking around, or anybody else who might have heard the gunfire. But it was just the same -- not a sound. Just the wind -- and Dick panting like wolves were after him. Right there, in those few seconds before we ran out to the car and drove away, that's

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when I decided I'd better shoot Dick. He'd said over and over, he'd drummed it into me.[20] No witnesses. And I thought. He's a witness. I don't know what stopped me. God knows I should've done it. Shot him dead. Got in the car and kept on going till I lost myself in Mexico."

A hush. For ten miles more, the three men ride without speaking.

Sorrow and profound fatigue are at the heart of Dewey's silence. It had been his ambition to learn "exactly what happened in that house that night." Twice now he'd been told, and the two versions were very much alike, the only serious discrepancy being that Hickock attributed all four deaths to Smith, while Smith contended that Hickock had killed the two women. But the confessions, though they answered questions of how and why, failed to satisfy his sense of meaningful design. The crime was a psychological accident, virtually an impersonal act; the victims might as well have been killed by lightning. Except for one thing: they had experienced prolonged terror, they had suffered. And Dewey could not forget their sufferings. Nonetheless, he found it possible to look at the man beside him without anger -- with, rather, a measure of sympathy -- for Perry Smith's life had been no bed of roses but pitiful, an ugly and lonely progress toward one mirage and then another. Dewey's sympathy, however, was not deep enough to accommodate either forgiveness or mercy. He hoped to see Perry and his partner hanged -- hanged back to back.

Duntz asks Smith, "Added up, how much money did you get from the Clutters?"

"Between forty and fifty dollars." ...

In Cold Blood, by Truman Capote
New York,1965, pp.262-278

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Notes

1. That Dick let fly = că pe Dick emoţia l-a făcut să vorbească
2. nigger (termen insultător) = negru
3. he was on to a cinch. The perfect score = el se pregătea de o lovitură sigură. Ocazie ideală.
4. a friend from The Walls = un prieten din puşcărie
5. he celled with someone who = a fost în aceeaşi celulă cu cineva care...
6. Don't tell me this guy ain't loaded = Să nu-mi zici că tipul ăsta nu e foarte bogat (slang)
7. And that really put bubbles in my blood. I told Dick to count me out = Şi asta într-adevăr m-a înmuiat. I-am spus lui Dick să nu mai conteze pe mine.
8. He was sore as hell = era supărat foc.
9. and now this punk wants to chicken out = şi acum găinarul ăsta vrea s-o şteargă iepureşte (slang)
10. ain't = haven't;
11. ain't got the guts to do it alone = n-am curajul s-o fac de unul singur
12. an old gun-shy dog = un cîine bătrîn care se temea de puşcă
13. like /as if/ we were a couple of door-to-door salesmen = ca şi cum am fi fost nişte negustori ambulanţi
14. don't = doesn't
15. don't lie to me, you sonofabitch = să nu mă minţi, canalie(slang)
16. you're gonne = you're going to
17. so let's get the hell out of here = aşa că să plecăm naibii de aici (slang)
18. hitch a ride = să găsesc o maşină care să mă ia.
19. That last shell was a bitch to locate = ultimul cartuş a fost el naibii de greu de găsit (slang)
20. he'd drummed it into me = mi-a băgat în cap ideia asta cu pisălogul.

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VOCABULARY

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A

abet	/əbet/	vt. a instiga, a îndemna
account	/əkaunt/	s. relatare; cont; pricină,cauză
account (for)		vi. a explica
actual	/ætʃuəl/	adj. real, concret
adduce	/ədʃu:s/	vt. a aduce (dovezi)
adjourment	/ədʒə:nmənt/	s. (jur.) amînare
adjudicate	/ədʒu:dikeit/	vt. a judeca
administer	/ədministə/	vt.(laws) (jur.) a aplica (legi)
advance	/ədva:ns/	vt. a propune
adversariness	/ædvəsərinis/	s. antagonism, caracter antagonist
adversary	/ædvəsəri/	adj. adversar, potrivnic; antagonist. s. concurent
adverse	/ædva:s/	adj. advers, potrivnic, nefavorabil
advise	/ədvaiz/	vt. a sfătui
advocate	/ædvəkeit/	vt. a susţine
affiliation	/əfilieiʃən/	s.(jur.) stabilirea paternităţii
affix	/əfiks/	vt. a lipi; a aplica
afford	/əfɔ:d/	vt. a oferi
aforesaid	/əfɔ:sed/	adj. de mai sus, menţionat mai sus
allegation	/ælegeiʃən/	s. afirmaţie, declaraţie
allege	/əledʒ/	vt. a pretinde, a pretexta
allegedly	/əledʒidli/	adv. pretins
allegiance	/əli:dʒəns/	s. fidelitate, supunere

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allowance /əlauəns/ s. (jur.) pensie alimentară

alum /æləm/ s. piatră acră, alaun

ancillary /ænsiləri/ adj.(to) subordonat; anexă

answerable /a:nsərəbl/ adj.(to) răspunzător faţă de

anvil /ænvil/ s. nicovală

appealable /əpi:ləbl/ adj. apelabil

appearance /əpiərəns/ s. (jur.) compariţie (în faţa unei instanţe); to enter an appearance= a compare în faţa unei instanţe

appellate /əpelit/ adj. de apel

application /æplikeiʃən/ s. cerere, petiţie

appraisal /əpraizəl/ s. preţuire, evaluare

approach /əproutʃ/ s. (fig.) cale; abordare

arbitrability /a:bitrəbiliti/ s. caracter arbitrabil, chestiune care este supusă arbitrajului

arrears /əriəz/ s. (pl.) restanţă

arrest /ərest/ s. suspendare arrest of judgment = suspendare a sentinţei

articulate /a:tikjuleit/ vt. a pronunţa; a enunţa

ascertain /æsətein/ vt. a stabili

ascertainable /æsəteinəbl/ adj. constatabil

assault /əsɔ:lt/ s. atac, silnicie

assent /əsent/ s. consimţământ

assessment /əsesment/ s. evaluare

assets /æsets/ s. (pl.)(jur.) avere, bunuri

assign /əsain/ vt.(jur.) a transfera, a repartiza; a atribui

assignee /æsini:/ s. (jur.) cesionar; concesionar; beneficiar

associate /əsouʃieit/ adj. (jur.) subordonat

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attorney /ətə:ni/ s. împuternicit (legal), reprezentant, avocat, agent legal împuternicit; at.at law = reprezentant legal calificat să trimită şi apere acţiunea în instanţă

attributable /ətribjutəbl/ adj. (to) imputabil, care poate fi pus în sarcina

authority /ɔ:θɔriti/ s. autorizaţie, mandat

availability /əveiləbiliti/ s. disponibilitate, existenţă

aver /əvə:/ vt. a confirma; (jur.) a dovedi, a demonstra

averment /əvəmənt/ s. afirmaţie

award /əwɔ:d/ s. (jur.) sentinţă
vt.(jur.) a da (prin sentinţă)

awareness /əwɛənis/ s. cunoaştere

B

ban /bæn/ vt. a interzice

bandanna /bændə:nə/ s. eşarfă (pentru gît, cap)

banish /bæniʃ/ vt. a exila

bar /ba:/ s. (the) avocatura;(to practice at the bar = a profesa avocatura); barou
vt. a interzice, a prohibi

bargain /ba:gin/ vi. a negocia

barn /ba:n/ s. hambar

barrister /bæristə/ s. avocat (pledant) - vezi în textul A Civil Action p. explicaţia termenului

bastardy /bæstədi/ s. copii nelegitimi; ilegalitate

bat /bæt/ vi. a ataca, a lovi

battery /bætəri/ s. violenţă; assault and battery = act de violenţă; silnicie

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bearing /bɛəriŋ/ s. raport, legătură; to have a bearing on = a avea legătură cu; (tehn.) lagăr, cuzinet

belly /beli/ s. pîntec

beneficial /benifiʃəl/ adj.(to) profitabil, avantajos, util pentru

bias /baiəs/ s. parţialitate; vt. a influenţa

bill /bil/ s. proiect de lege; notă de plată; (of lading) conosament

billfold /bilfould/ s. portofel (de bani) (S.U.A.)

binding /baindiŋ/ adj. obligatoriu

blackmail /blækmeil/ s. şantaj

blame /bleim/ vt. (upon) a da vina pe, a reproşa

blow, blew, blown /blou;blu:;bloun/ vi. (up) a-şi pierde cumpătul

blueprint /blu:print/ s. plan de detaliu; fotocopie

board /bɔ:d/ s. comisie, consiliu

bolt /boult/ vi. a fugi, a se ascunde

bookmaker /bukmeikə/ s. persoană care ţine registrele de rămăşaguri la curse

bootleg /bu:tleg/ vi. (SUA) a face contrabandă de băuturi alcoolice

bound /baund/ (p.t.de la bind, folosit la pasiv) obligat, angajat

brass /bræs/ s. bani (slang)

breach /bri:tʃ/ s. încălcare; breach of promise= călcarea cuvîntului dat, abuz de încredere

brag /bræg/ s. lăudăroşenie

brief /bri:f/ s. (jur.) scurtă expunere; conducerea (de către un avocat) a unui proces; dosar (al unei proceduri); adj. scurt, sumar; vt.(jur.) a încredinţa unui avocat conducerea unui proces.

brutal /bru:tl/ adj. inuman, iraţional

bullet /bulit/ s. glonţ

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burdensome	/bə:dnsəm/	adj. oneros, supărător
butt	/bʌt/	s. muc de ţigară
by-law	/bailɔ:/	s. hotărîre (decizie) emanînd de la o autoritate locală
bypass	/baipa:s/	vt. a ignora

C

call	/kɔ:l/	vi. (for) a cere
candour	/kændə/	s. sinceritate
canvas	/kænvəs/	s. pînză, tablou
carcass	/ka:kəs/	s. hoit
carry	/kæri/	vt. (on) a continua, a duce mai departe; vt. (out) a duce la bun sfîrşit; a pune în aplicare
case	/keis/	s. proces
casting	/ka:stiŋ/	adj hotărîtor, decisiv; casting vote = votul decisiv
cause	/kɔ:z/	s.(jur.) cauză, proces
censure	/senʃə/	s. criticare, dezaprobare
certificate	/sətifikeit/	s. certificat, adeverinţă;-certificate of holy orders= certificat de intrare în rîndul preoţilor; - certificate of ordination = certificat de investitură
charge	/tʃa:dʒ/	s. sarcină, răspundere; vt. a acuza; (to) a pune (în); (with) a învinui (de); a însărcina (cu)
charter	/tʃa:tə/	s. hrisov, cartă; vt. a închiria, a tocmi; a navlosi
chattel	/tʃætl/	s. avere; movable chattel= avere mobilă
cheat	/tʃi:t/	s. înşelătorie
check	/tʃek/	vt. a împiedica

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cite	/sait/	vt. a enumera, a cita
citizenry	/sitiznri/	s. cetăţenii (colectiv luaţi)
claim	/kleim/	s. (jur.) reclamaţie, pretenţie; vt. a pretinde, a cere
clear	/kliə/	vt. a libera, a evacua; (away) a risipi
clearance	/kliərəns/	s. customs clearance = chitanţă de plata vămii
clerk	/kla:k/	s. secretar
cliché	/kli:ʃei/	s. (fig.) clişeu
cloak	/klouk/	s. pretext, mască
closet	/klɔzit/	s. cămăruţă, dulap
clothe	/klouð/	vt. (fig.) a investi
coarse	/kɔ:s/	adj. obscen
coerce	/kouə:s/	vt. a constrînge
coinage	/kɔinidʒ/	s. monede
collect	/kəlekt/	vt. a deduce, a conclude
colour	/kʌlə/	s.(jur.) aparenţă; under colour of = sub aparenţa...
collision	/kəlizən/	s. ciocnire
collusion	/kə lu:ʒən/	s. complicitate, conivenţă
collusive	/kə lu:siv/	adj. de conivenţă
collusiveness	/kə lu:sivnis/	s. complicitate, conivenţă
come, came, come	/kʌm; keim; kʌm/	vi. (about) a se întîmpla, a se produce; (forward) a se prezenta
comfort	/kʌmfət/	s. consolare
comfortably	/kʌmfətəbli/	adv. liniştit, lejer
commence	/kəmens/	vt.şi vi. a începe
commission	/kəmiʃən/	s. procură, împuterniciri, mandat
commit	/kəmit/	vt.(to prison) a trimite în închisoare; a încredinţa
commitment	/kəmitmənt/	s. aderare

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complaint	/kəmpleint/	s. plîngere
comply	/kəmplai/	vi. (with) a fi de acord cu, a se conforma (cu, la)
compulsory	/kəmpʌlsəri/	adj. obligatoriu
concealment	/kənsi:lmənt/	s. tăinuire
concede	/kənsi:d/	vt. a acorda (un drept)
conceivably	/kənsi:vəbli/	adv. de presupus, de imaginat
concern	/kənsə:n/	s. chestiune (care priveşte), grijă; vt. a interesa
conclusive	/kənklu:siv/	adj. decisiv, definitiv, concludent
conclusiveness	/kənklu:sivnis/	s. finalitate, caracter definitiv
concurrent	/kənkʌrənt/	adj. simultan, paralel
conduct	/kɔndəkt/	s. comportament, conducere
confer	/kənfə:/	vt. a acorda, a conferi
confine	/kənfain/	vt. a limita
connoiseur	/kɔnisə:/	s. cunoscător
consensual	/kənsenʃu:əl/	adj. bazat pe consimţămînt reciproc
consider	/kənsidə/	vt. a lua în considerare
consideration	/kənsidəreiʃən/	s. cauză, motiv
consignee	/kənsaini:/	s. destinatar
consignor	/kənsainə/	s. expeditor (de marfă)
consistent	/kənsistənt/	adj. (with) compatibil (cu), de acord (cu)
construe	/kənstru:/	vt. a interpreta
consume	/kənsju:m/	vi. a se ofili
contemplate	/kɔntempleit/	vt. a avea în vedere
contend	/kəntend/	vt. a afirma, a susţine
contention	/kənʃenʃən/	s. afirmaţie
contest	/kəntest/	s. concurs
contestant	/kəntestənt/	s. concurent

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contingency /kəntindʒənsi/ s. posibilitate, întîmplare neprevăzută

contingent /kəntindʒənt/ adj. eventual, accidental, neprevăzut

contradistinguished /kɔntrə-distiŋgwift/ adj. pus în opoziţie

contrive /kəntraiv/ vt. a organiza; a pune la cale

control /kəntroul/ s. supraveghere

controversial /kɔntrəvə:ʃəl/ adj. controversat

controversy /kəntrɔvə:si/ s. controversă

convene /kənvi:n/ vi. a se întruni

convenience /kənvi:njəns/ s. comoditate

convert /kənvə:t/ vt. a transforma, a preschimba

conveyancer /kənveiənsə/ s. jurist, lucrînd în transferul de bunuri

conveyancing /kənveiənsiŋ/ s.(jur.) documente pentru/ şi transfer de bunuri

convict /kənvikt/ vt. a condamna

corpus /kɔ:pəs/ s. total, ansamblu (al unei succesiuni, investiţii etc.)

counsel /kaunsəl/ s. avocat (consultant); consilier juridic; - vezi şi textul A Civil Action

count /kaunt/ s. (jur.) cap de acuzaţie

countenance /kauntinəns/ s. mină; obraz

counterbalance /kauntəbæləns/ vt. a contracara, a compensa

counterfeit /kauntəfit/ adj. imitat, fals; s. plastografie; vt. a falsifica, a plastografia

counterpart /kauntəpa:t/ s. corespondent

county /kaunti/ s. comitat, ţinut

coupon /ku:pɔn/ s. titluri, obligaţiuni

convenant /kɔnvənənt/ s. (jur.) acord

coverlet /kʌvəlit/ s. cuvertură

crime /kraim/ s. delict, infracţiune

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criterion (criteria) /kraitiərɪən; kraitiəriə/ s. criteriu

cross-examine /krɔsigzæmin/ vt. a supune unui interogatoriu (alternativ de procuror şi avocat) în instanţă

crossing /krɔsiŋ/ s. barare

culprit /kʌlprit/ s. inculpat, vinovat

curtailment /kə:teilmənt/ s. micşorare, restrîngere

custody /kʌstədi/ s. grijă; custodie

D

damage /dæmɪdʒi/ s.(pl.) daune, despăgubiri

dealings /di:liŋz/ s.(pl.) relaţii

debenture /dibentʃə/ s. obligaţiune (ipotecară)

debtor /detə/ s. debitor, datornic

decedent /disi:dənt/ s.(jur.)(SUA), decedat, răposat, defunct

deceit /disi:t/ s. înşelătorie

deception /disepʃən/ s. înşelăciune

deceptive /diseptiv/ adj. înşelător

decline /diklain/ vt. a refuza

deduction /didʌkʃən/ s. scăzămînt, reţinere, penalitate

deed /di:d/ s.(jur.) document, act

deem /di:m/ vt. a judeca, a socoti, a considera

defeat /difi:t/ vt. a zădărnici

defendant /difendənt/ s. inculpat, acuzat, pîrît

defraud /difrɔ:d/ vt. a frustra, a escroca

defray /difrei/ vt. a acoperi (cheltuieli)

deliver /dilivə/ vt. (judgment) a pronunţa sentinţa

delay /dilei/ s. întîrziere, amînare

depositary /dipɔzitəri/ s. (fig.) păstrător

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deprivation	/depriveiʃən/	s. deposedare, pierdere
deprive	/dipraiv/	vt. desărcina
derive	/diraiv/	vt. (from) a deriva (din), a lua (din)
desertion	/dizə:ʃən/	s. abandon
desirability	/dizairəbiliti/	s. caracter dezirabil
determination	/ditə:mineiʃən/	s. (jur.) decizie, sentinţă
determinative	/ditə:minətiv/	adj.(of) care determină, care decide
devise	/divaiz/	vt. a inventa
devolution	/di və:lu:ʃən/	s. descentralizare
die, dies	/dai ; daiz/	s. ştanţă, matriţă
dime	/daim/	s. (SUA) monedă de 10 cenţi
directionary	/direkʃənəri/	adj. directiv
disallow	/disəlau/	vt. a respinge
discharge	/distʃa:dʒ/	s. plată, achitare (unei datorii); vt. a da drumul, a elibera
disclaim	/diskleim/	vt. a renunţa la, a abandona
disclose	/disklouz/	vt. a divulga
disclosure	/disklouʒə/	s. divulgare, relevare
disconcerting	/diskənsə:tiŋ/	adj. deconcertant
discretion	/diskreʃən/	s. discernămînt; libertate de acţiune
disease	/dizi:z/	s. boală
dismiss	/dismis/	vt.(jur.) a respinge
dispel	/dispel/	vt.a risipi
dispense	/dispens/	vt. a prepara (medicamente)
display	/displei/	s. expunere, afişare
dispose	/dispouz/	vi. (of) a rezolva, a tranşa
disprove	/dispru:v/	vt. a dovedi falsitatea
dispute	/dispju:t/	s. neînţelegere
disregard	/disriga:d/	vt. a trece cu vederea, a nu ţine cont de

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disruptive /disrʌptiv/ adj. creînd întrerupere

dissent /disent/ s. opoziţie, aviz contrar, dezacord; (jur.) redarea opiniei minorităţii în decizerea unui caz; vi. a nu fi de aceeaşi părere

distributee /distribjuti:/ s. (jur.) părtaş la succesiunea lăsată de defunct

diversity /daivə:siti/ s. divergenţă de opinii

divert /daivə:t/ vt. a renunţa la

dodge /dɔdʒ/ s. şiretlic, artificiu, truc

douse /daus/ vt.(SUA) (coll.) a stinge

draft /dra:ft/ s. cambie

draftsman /dra:ftsmən/ s. autorul unui document juridic

drainage /dreinidʒ/ s. drenare

draw, drew, drawn /drɔ; dru:; drɔ:n/ vt. (up) a alcătui, a întocmi

due /dju:/ adj.(to) datorat, cuvenit

dun /dʌn/ vt. a importuna, a hărţui (un debitor)

duty /dju:ti/ s. taxă

E

egregiously /igri:dʒəsli/ adv. exagerat

elapse /ilæps/ vi. a se scurge (timpul)

embed /imbed/ vt. a înscrie

embody /imbɔdi/ vt. a reuni

emergency /imə:dʒənsi/ s. eveniment neprevăzut

emporium /empɔ:riəm/ s. centru (comercial)

empower /impauə/ vt. a împuternici

enable /ineibl/ vt. a permite, a crea posibilitatea, a da putinţa

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enact	/inækt/	vt. a decreta
encrease		vezi = increase
encroach	/inkrouʧ/	vt. (upon) a viola, a încălca
endeavour	/indevə/	s. străduinţă, silinţă
endure	/indjuə/	vi. a dura
enforce	/infɔ:s/	vt. a pune în aplicare
enforcement	/infɔ:smənt/	s. aplicare, executarea
engender	/inʤendə/	vt. (fig.) a da naştere
enhance	/inhɑ:ns/	vt. a spori, a mări
enjoin	/inʤɔin/	vt. a prescrie; a impune
enquire		vezi = inquire
entreat	/intri:t/	vt. a implora
entrench	/intrenʧ/	vt. a plasa într-o poziţie sigură
entrust	/intrʌst/	vt. a încredinţa
envisage	/invizidʒ/	vt. a prevedea
envoy	/envɔi/	s. trimis, sol
erasure	/ireiʒə/	s. ştergere
err	/ə:/	vi. a fi în eroare
estate	/isteit/	s. proprietate; moşie; succesiune
estoppel	/istɔpəl/	s. (jur.) obstrucţie
evolve	/ivɔlv/	vi. (from) a emana (de la)
evidence	/evidəns/	s. (jur.) mărturie
evoke	/ivouk/	vt. a trezi; evoke the attention= a atrage atenţia
exceed	/iksi:d/	vt. a depăşi
expediency	/ikspi:djənsi/	s. utilitate, eficacitate
expedient	/ikspi:djənt/	s. mijloc de scăpare; adj.potrivit, util
expedite	/ekspidait/	vt. a urgenta
expense	/ikspens/	s. cheltuială

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extenuate /ekstenjueit/ vt. a atenua, a găsi circumstanţe atenuante pentru...

F

fabric /fæbrik/ s. edificiu; sistem

fabricate /fæbrikeit/ vt. a falsifica

fabricator /fæbrikeitə/ s. falsificator

fair /feə/ s. tîrg

fairness /feənis/ s. echitate, justeţe

fall, fell, fallen /fɔ:l; fel; fɔ:lən/ vi. (back upon) a apela la, a recurge

far-reaching /fa:ri:tʃiŋ/ adj. vast, de mare amploare

fastidious /fæstidiəs/ adj. dificil, pretenţios

faulty /fɔ:lti/ adj. greşit, imperfect

fee /fi:/ s. onorariu; taxă

feel, felt, /fi:l; felt/ vi. (strongly on) a fi foarte supărat în privinţa

feloniously /filounjəsli/ adv. cu rea credinţă, premeditat

felony /feləni/ s. crimă /capitală, premeditată/; vezi şi textul "Assise"

fetter /fetə/ vt. (fig.) a îngrădi

fiction /fikʃən/ s. ficţiune, născocire

file /fail/ s. dosar, clasor; vt. a înregistra

final /fainl/ adj. (jur.) definitiv

find, found, found /faind; faund/ vi. a da pronunţarea

finding /faindiŋ/ s. (jur.) verdict; (pl.) constatare, concluzii

fine /fain/ s. amendă

fishery /fiʃəri/ s. pescuit; pescărie

fit /fit/ adj. potrivit, corespunzător

fitting /fitin/ s. accesoriu

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flashlight /flæʃlait/ s. lanternă

flatlet /flætlit/ s. apartament mic

flea /fli:/ s. purice

float /flout/ vi. a pluti

fly /flai/ vt. a arbora

focus /foukəs/ vt. a îndrepta, concentra (lumina); vi. a converge, a se concentra

foreseeable /fɔ:si:əbl/ adj. previzibil

foregoing /fɔ:gouiŋ/ adj. precedent

forge /fɔ:dʒ/ vt. a falsifica, a contrafăce, a plastografia

forgery /fɔ:dʒəri/ s. fals, contrafacere

formal /fɔ:məl/ adj. oficial

forsake, forsook, forsaken /fəseik; fəsuk; fəseikən/ vt. a părăsi

forwarding /fɔ:wɔ:diŋ/ s. transmitere, transfer

fowl /foul/ s. pasăre (de curte)

frame /freim/ s. ramă; vt. a închipui, a născoci; (fig.) a încadra

franchise /frænʧaiz s. drept de vot

fraud /frɔ:d/ s. înşelătorie, fraudă

freedom /fri:dəm/ s. libertate (pl.); drepturi (cetăţeneşti)

freehold /fri:hould/ s. formă de proprietate perpetuă şi independentă

frisk /frisk/ vt. (SUA,slang) a percheziţiona

frustrate /frʌstreit/ vt. (jur.) a anula

fulcrum (pl.fulcra) /fʌlkrəm; fʌlkrə/ s. punct de sprijin, reazem (mec.)

full-blown /ful-bloun/ adj. complet

furnace /fə:nis/ s. cazan (de calorifer)

further /fə:ðə/ vt. a favoriza

further more /fə:ðəmɔ:/ adv. în plus; de altfel

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G

gamble	/gæmbl/	vi. a juca jocuri de noroc
gaol	/dʒeil/	s. închisoare
gear	/giə/	s. (mec.) roată dinţată; angrenaj
genuine	/dʒenjuin/	adj.autentic, adevărat
germane	/dʒə:mein/	adj.just, oportun
give, gave, given	/giv;geiv;givn/	vt. (up) a renunţa (la); vt. (evidence) a depune mărturie
go, went, gone	/gou;went;gɔn/	vi. (about) a merge din loc în loc, a circula
goad	/goud/	vt. a îndemna
govern	/gʌvən/	vt. a reglementa
government	/gʌvnmənt/	s. formă de guvernămînt; guvern
gown	/gaun/	s. robă
grant	/gra:nt/	s. permisiune; concesii;aprobare; vt. a admite, a da, a acorda
gross	/grous/	adj. flagrant
ground	/graund/	s. temei
groundless	/graundlis/	adj.fără temei, nemotivat
guardian	/ga:djən/	s. tutore
guilt	/gilt/	s. vinovăţie
guilty	/gilti/	adv.(of) vinovat (de)
handcuff	/hændkʌf/	s. cătuşe; vt. a pune în cătuşe
handle	/hændl/	vt. a se ocupa de
harm	/ha:m/	vt. a face rău
harmful	/ha:mful/	adj. vătămător
headquarters	/hedkwɔ:təz/	s. (pl.) cartier general
hear, heard, heard	/hiə;hə:d/	vt. a judeca (o pricină)
hearing	/hiəriŋ/	s. (jur.) înfăţişare, audiere
heckle	/hekl/	vt. a hărţui cu întrebări

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hence /hence/ adv. prin urmare; de aici

herald /herəld/ s. crainic

hereafter /hiəra:ftə/ adv. mai tîrziu, pe viitor, de acum încolo

hereby /hiəbai/ adj. (jur.) de faţă; adv. în/prin aceasta

heretofore /hiətufɔ:/ adv. pînă acum, pînă în prezent

hindrance /hindrəns/ s. împiedicare; stavilă

hire /haiə/ vt. a angaja

hitherto /hiðə t:/ adv. pînă acum; pînă atunci

holding /houldiŋ/ s. posesiune (de bunuri)

holler /hɔ:lə/ vi. a striga (după ajutor)

horse race /hɔ:sreis/ s. cursă de cai

hover /hɔvə/ vi. a se balansa, legăna; a aştepta (pregătit)

however /haevə/ adv. oricît (de); conj. însă

I

ignominious /ignəminiəs/ adj. infam, umilitor

ill-treat /iltri:t/ vt. a maltrata

immaterial /imətiəriəl/ adj. neimportant, neesenţial

impact /impækt/ s. (fig.) efect, influenţă

impair /impɛə/ vt. a slăbi, a fi în detrimentul

impeachment /impi:tʃmənt/ s. (jur.) acuzaţie, punere sub acuzaţie

impetus /impitəs/ s. avînt

implement /impliment/ vt. a îndeplini, a pune în aplicare

imply /implai/ vt. a implica

import /im'pɔ:t/ vt. a introduce

inasmuch /inəzmʌtʃ/ adv. (as) întrucît, dat fiind că; în măsura în care

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inception	/insepʃən/	s. început
incidental	/insidentl/	adj.(to) inseparabil (de)
income	/inkəm/	s. venit, rentă
incongruity	/inkəŋgru:iti/	s. lipsă de armonie, dezacord, nepotrivire
inconvenience	/inkənvi:njəns/	s. jenare, inoportunare
inconsistency	/inkənsistənsi/	s. contradicţie, dezacord, inconvenienţă
inconsistent	/inkənsistənt/	adj. contradictoriu
increase	/in'kri:s/	vt.,vi. a creşte
incur	/inkə:/	vt. a(-şi) asuma, a contracta (obligaţii, responsabilităţi
indict	/indait/	vt. a pune sub acuzare
indictment	/indaitmənt/	s. acuzaţie, incriminare, rechiziţionare
inducement	/indju:smənt/	s. provocare, incitare
infant	/infənt/	s. (jur.) minor
infer	/infə:/	vt. a presupune, a implica
inflict	/inflikt/	vt. a pricinui
infringe	/infrindʒ/	vt. a viola, a contraveni la
ingratiatingly	/ingreiʃieitiŋli/	adv. insinuant, ca pentru a cîştiga favoarea...
inimical	/inimikəl/	adj. (to) defavorabil, contrar
injunction	/indʒʌŋkʃən/	s. (jur.) hotărîre de amînare
injury	/indʒəri/	s. prejudiciu, pagubă, lezare
inquire	/inkwaiə/	vi. a se interesa de, a se informa asupra
inquiry	/inkwaiəri/	s. cercetare
instalment	/instɔ:lmənt/	s. rată
instant	/instənt/	adj. curent, de faţă
intercourse	/intə:kɔ:s/	s. raporturi, relaţii
interest	/intrist/	s. interes, avantaj;(com.)participaţie; dobîndă, procentaj

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interfere /intəfiə/ vi. (with) a se amesteca (în)

interlocutory /intə:lɔkjutəri/ adj.(jur.) pre-judiciar ; nefinal

intertwine /intə:twain/ vt. a întreţese, a împleti

intestacy /intestəsi/ s. intestat, inexistenţa unui testament

intreat vezi = entreat

invalid /invælid/ adj.(jur.) fără putere legală

invalidate /invælideit/ vt. a infirma, a anula

invoke /invouk/ vt. a apela la

involve /invɔlv/ vt. a implica

involved /invɔlvd/ adj. complicat

irrelevant /irelivənt/ adj. (to) străin (de)

irrespective /irispektiv/ adj. (of) independent (de)

issue / isju:/ s. chestiune, problemă; vt. a emite

J

jibe /dʒaib/ s. glumă răutăcioasă

joint /dʒɔint/ s. (SUA) speluncă; adj. mixt

justice /dʒʌstis/ s. justiţie, dreptate; judecător; justice of the peace = judecător de pace

K

kid /kid/ s. copil (slang); vt.a face glume, a păcăli

kindle /kindl/ vt. a aprinde

knowingly /nouiŋli/ adv. cu bună ştiinţă

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L

label	/leibl/	vt. (şi fig.) a eticheta
lade, laded, laded (sau laden)	/leid; leidid;/ /leidn/	vt. a încărca
lap	/læp/	vt. (up) a înghiţi, a sorbi
lapse	/læps/	s. greşeală, eroare
laundry	/lɔ:ndri/	s. spălătorie
lawsuit	/lɔ:sju:t/	s. proces, litigiu judiciar
lawyer	/lɔ:jə/	s. avocat, jurisconsult (vezi şi textul: A Civil Action)
lay		adj. nespecializat, profan;
lay, laid, laid	/lei; leid; leid/	vt. a fixa, a stabili; a impune (taxă, etc.); (down) a formula; a expune
leading	/li:diŋ/	adj. de importanţă hotărîtoare
lease	/li:s/	s. închiriere, concesiune
leave	/li:v/	s. autorizaţie, permis
leeway	/li:wei/	s. (fig.) libertate de acţiune
legislature	/ledʒisleitʃə/	s. legislatură, corp legislativ
lenity	/leniti/	s. clemenţă, îngăduinţă
let, let, let	/let/	vt. a închiria
letting	/letiŋ/	s. închiriere, imobil închiriat
lever	/li:və/	s. (mec.) pîrghie, levier
levy	/levi/	vt. a rechiziţiona
liability	/laiəbiliti/	s. responsabilitate
liable	/laiəbl/	adj. expus; (for) responsabil (de)
libel	/laibəl/	s. defăimare, calomnie
licensee	/laisənsi:/	s. titular al unui permis (autorizaţie)
lie, lay, lain	/lai; lei; lein/	vi. a rămîne
light	/lait/	s. aspect
line	/lain/	vt. a mărgini

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liquor /likə/ s. băutură (spirtoasă)

list /list/ s. (jur.) rol;

litigate /litigeit/ vt. a pleda; (înv.) a nega, a contesta

litigation /litigeiʃən/ s. litigiu

log /lɔg/ s. (radio) locul radiodifuzării

log-book /lɔgbuk/ s. (mar.) jurnal de bord

loop /lu:p/ s. laţ

lot /lɔt/ s. noroc, sorţi

M

make, made, made /meik; meid/ vt.(much of) a trata ca avînd o importanţă mare; (up) a face, a confecţiona

maliciously /məliʃəsli/ adv. cu intenţie, cu premeditare

maintenance /meintinəns/ s. întreţinere, menţinere

manacle /mænəkl/ vt. a pune în cătuşe

mandatory /mændətəri/ adj.(SUA) obligatoriu

man-of-war, (pl.men-of-war) /mænəvwɔ:/ /menəvwɔ:/ s. vas de război

manor /mænə/ s. moşie, seniorie

mansion /mænʃən/ s. conac

manslaughter /mænslɔ:tə/ s. omor (fără premeditare)

master /ma:stə/ s. căpitan (în marina comercială)

marital /maraitl/ adj. matrimonial, conjugal

mark /ma:k/ vt. (off) a distinge

material /mətiəriəl/ s. material; adj. important, esenţial

meagre /mi:gə/ adj.(fig.) slab, nedezvoltat

meaningful /mi:niŋful/ adj. semnificativ

meaningfully /mi:niŋfuli/ adv. în mod semnificativ

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meanness /minnis/ s. sărăcie

means (sg .) /mi:nz/ s. mijloace

meet, met, met /mi:t ; met/ vt. a scoperi (cheltuieli,etc.), a face faţă

mellow /melou/ vt. a atenua, a îndulci (culori)

membership /membəʃip/ s. număr de membri

mischief /mistʃif/ s. rău, prejudiciu, lezare

miscalculation /miskælkjuleiʃən/ s. calculare greşită

misconduct /miskɔndəkt/ s. conducere (administrare) greşită

misconstruction /miskənstrʌkʃən/ s. interpretare greşită

mislead, misled, misled vt. a induce în eroare
/misli:d; misled/

misrepresent /misreprizent/ vt. a denatura

misrepresentation s. (jur.) declaraţii false
/misreprizenteiʃən/

mortgage /mɔ:gidz/ s. ipotecă

motion /mouʃən/ s. propunere; vi. (to) a face cuiva semn (cu mîna, capul)

motorcade /moutəkeid/ s. (SUA) grup de automobile mergînd în caravană

move /mu:v/ vt. a propune, a motiva

mulberry /mʌlbəri/ s. dudă

N

naked /neikid/ adj. simplu; vulnerabil

national /næʃənl/ s. supus

needful /ni:dful/ adj. necesar, indispensabil

negligence /neglidʒəns/ s. omisiune

nib /nib/ s. vîrf (la pana de scris)

nonadversariness /nɔnædvəsərinis/ s. neantagonism

noncollusive /nɔnkəlu:siv/ adj. necomplice

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non-contentious /nɔnkənten∫əs/ adj. nelitigios

notwithstanding /nɔtwiθst∧ndiŋ/ adv. cu toate acestea; conj.(that) în ciuda faptului (că)

nugatory /nju:gətəri/ adj. fără efect legal, nevalid, nul şi fără valoare

nuisance /nju:səns/ s. (cauză de) inconvenient, lezarea drepturilor publice;vezi şi textul "Nuisance"

nullity /n∧lti/ s. (jur.) invaliditate, caducitate

nutty /n∧ti/ adj.(SUA)(coll.) ridicol, dement (slang)

O

objectionable /əbzek∫nəbl/ adj. obiectabil

obnoxious /əbnɔk∫əs/ adj. odios, infam

observance /əbzə:vəns/ s. respectarea (regulilor,etc.)

observe /əbzə:v/ vt. a respecta (întocmai)

obsolite /ɔbsəli:t/ adj. învechit

obtain /əbtein/ vi. a fi în uz

obviate /ɔbvieit/ vt. a preveni, a neutraliza

occult /ɔk∧lt/ adj. secret, tainic

occupier /ɔkjupaiə/ s. locatar

occur /əkə:/ vi. a se întîmpla, a avea loc

occurence /ək∧rəns/ s. incident, întîmplare

offcolour /ɔ:fk∧lə/ adj.(SUA) de gust îndoielnic, riscant

offence /əfens/ s. act ilegal, crimă, atac

offend /əfend/ vt. a încălca

offense s. (SUA): vezi offence

offensive /əfensiv/ adj. jignitor, insultător

officer /ɔfisə/ s. funcţionar, ofiţer

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official /əfiʃəl/ s. funcţionar

operate /ɔpereit/ vt. a conduce

ordain /ɔ:dein/ vt. a decreta, a hotărî

order /ɔ:də/ s. dispoziţie; postal order: bon de poştă; post-office money order= mandat poştal

ordination /ɔ:dineiʃən/ s. investitură, instalare, numire

original /əridʒənl/ adj. iniţial, de început

originate /əridʒineit/ vt. a iniţia

outcome /autkʌm/ s. rezultat

outdated /autdeitid/ adj. învechit, demodat

outgrowth /autgrouθ/ s. urmare, rezultat (îmbunătăţit)

outline /autlain/ s. rezumat, schiţă; vt. a prezenta pe scurt, a schiţa, a proiecta, a fixa în linii mari

outright /autrait/ adj. total

outset /autset/ s. început

outweigh /autwei/ vt. (fig.) a depăşi în importanţă... a contrabalansa

oversapitalize /ouvəkæpitəlaiz/ vt. a fixa valoarea nominală a capitalului (unei firme) mai mare decît limitele impuse de lege sau de o politică financiară; a aloca o sumă excesivă (pt.o acţiune, întreprindere,etc.)

overlook /ouvəluk/ vt. a trece cu vederea

overmuch /ouvəmʌtʃ/ adv. peste măsură

overrule /ouvəru:l/ vt. a respinge, a avea o autoritate superioară

overturn /ouvətə:n/ vt. a da peste cap, a inversa

P

panel /pænl/ s. tablou nominal (de asiguraţi, etc.)

pant /pænt/ vi. a gîfîi

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paper	/peipə/	s.(pl.) documente, acte
parish	/pæriʃ/	s. parohie
party	/pa:ti/	s. persoană legală, parte
pass	/pa:s/	vt. a pronunţa
patent	/peitənt/	adj. evident; s. brevet,invenţie; vt. a breveta
patently	/peitəntli/	adv. clar
pattern	/pætən/	s. model, exemplu
patternless	/pætənlis/	adj. nereglementat în baza unor prescripţii
penalty	/penəlti/	s. pedeapsă
penury	/penjuri/	s. sărăcie
performance	/pəfɔ:məns/	s. îndeplinire, executare
perpetrator	/pə:pitreitə/	s. criminal, făptuitor (de crimă)
persuasive	/pəsweisiv/	adj. de convingere; convingător
petty	/peti/	adj. neînsemnat
piecemeal	/pi:smi:l/	adj. pe fragmente, bucată cu bucată
plain	/plein/	adj. simplu
plaintiff	/pleintif/	s. reclamant
plea	/pli:/	s. pledoarie, argument (principal al unei pledoarii)
pleader	/pli:də/	s. apărător; agent judiciar
pledge	/pledʒ/	vt. a angaja (onoarea,cuvîntul), a-şi lua angajamentul
pliers	/plaiəz/	s. (pl.) pensă de îndoit sîrmă
point	/pɔint/	s. punct esenţial
poke	/pouk/	vi. (around) a iscodi
policy	/pɔlisi/	s. poliţă; public policy - interes public; policy holder - titular al unei poliţe de asigurare
post	/poust/	s. suport

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potential /pəlenʃəl/ adj. posibil, eventual

powder /paudə/ s. praf; baking powder - praf de copt; egg powder - praf de ouă

power /pauə/ s. procură, mandat, împuternicire

practitioner /præktiʃnə/ s. jurist practician

precedence /pri:si:dəns/ s. prioritate, întîietate

precedential /presə denʃəl/ adj. de precedent

preclude /pri klu:d/ vt. a face inutilizabil

predicament /pridikəmənt/ s. situaţie grea, neplăcută

predictability /pridiktəbiliti/ s. caracter previzibil, pronosticabil

predictable /pridiktəbl/ adj. previzibil

prefer /prifə:/ vt. (jur.) a prezenta

prejudice /predʒudis/ vt. a păgubi

premises /premisiz/ s.(pl.) locuinţă

premonition /pri:məniʃən/ s. prevestire

presumably /prizju:məbli/ adv. probabil

pretence /pritens/ s.(jur.) by false pretences: prin mijloace frauduloase

prevail /priveil/ vi. (upon) a convinge, a determina

prevalent /prevələnt/ adj. foarte răspîndit

prevent /privent/ vt. a împiedica, a preîntîmpina, a înlătura

principal /prinsəpəl/ s. director

prior /praiə/ adv. (to) anterior

privacy /praivəsi/ s. secret

probate /proubit/ s. validare (a unui testament); probate court = instanţă pentru stabilirea validităţii

procrastination /proukræstineiʃən/ s. tărăgănare, amînare

proctor /prɔktə/ s. procurist

prompt /prɔmpt/ vt. a îndemna

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prosecute	/prɔsikʃu:t/	vt. a urmări pe cale judiciară
provide	/prəvaid/	vi. (for) a se îngriji (de); (jur.) a prevedea, a stipula
provided	/prəvaidid/	conj.(that) cu condiţia (ca)
province	/prɔvins/	s. competenţă, resort
provision	/prəvizən/	s. dispoziţie (a unei legi) prevedere
prow	/prau/	s. provă
pun	/pʌn/	s. joc de cuvinte
punch	/pʌntʃ/	vt. a lovi cu pumnul
purchase	/pə:tʃəs/	s. cumpărare
purport	/pə:pət/	vt. a tinde să demonstreze; a implica, a avea pretenţie de; a fi prezentat ca
pursuant	/pəsju:ənt/	adv. (to) în conformitate cu, conform cu
put	/put/	vt. (off) a lansa

Q

qualification	/kwɔlifikeiʃən/	s. condiţie, descriere; character qualification = caracterizare
quash	/kwɔʃ/	vt.(jur.) a anula
quill	/kwil/	s. pană de pasăre
quiz	/kwiz/	s. concurs de întrebări (de tipul: "cine ştie, cîştigă")

R

rack	/ræk/	s. consolă, suport
random	/rændəm/	adj. întîmplător, făcut la întîmplare

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rank	/ræŋk/	s. rînd, rang; vt. a aşeza, a plasa; adj. absolut, complet, extrem
rashness	/ræʃnis/	s. nesăbuinţă, imprudenţă
ratio	/reiʃiou/	s. proporţie
rationale	/ræʃiəna:li/	s. expunere de motive
readily	/redili/	adv. fără dificultate
realise	/riəlaiz/	vt. a-şi da seama, a înţelege
realm	/relm/	s. regat
rebut	/ribʌt/	vt. a dovedi drept fals
reconnoiter	/rekənɔitə/	vi. a merge în recunoaştere
record	/s'rekɔ:d;v=rikɔ:d/	s. raport; vt. a înregistra, a trece în registru
recover	/rikʌvə/	vt. a recîştiga, a recupera, a recăpăta, a reintra (în posesiune, drepturi)
recovery	/rikʌveri/	s. recuperare
redress	/ridress/	s. îndreptare, reparaţie; to seek redress = a cere dreptate
refund	/ri:fʌnd/	vt. a restitui, a rambursa
regard	/riga:d/	s. stimă, atenţie, consideraţie
registrar	/redʒistra:/	s. ofiţer al stării civile, grefier
regulatory	/regjulətɔri/	adj. diriguitor
release	/rili:s/	s.(jur.) cesiune, transfer
relevance	/relivəns/	s. (to) legătură (cu)
relevant	/relivənt/	adj. respectiv; legat (de chestiunea în discuţie)
relief	/rili:f/	s. ajutor, asistenţă
relinquish	/rilinkwiʃ/	vt. a renunţa (la)
reluctant	/rilʌktənt/	adj.(to) nedornic (să)
rely	/rilai/	vi. (on) a se întemeia (pe)
remainder man	/rimeindəmən/	s.(pl.-men) co-beneficiar, beneficiar al unui bun grevat de dreptul de returnare

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remand /rima:nd/ vt. a trimite (cazul) înapoi (unei instanţe inferioare)

remedy /remidi/ s. remediu

remit /rimit/ vt. (jur.) a trimite (la o altă instanţă)

removable /rimu:vəbl/ adj. înlăturabil

removal /rimu:vəl/ s. îndepărtare

remove /rimu:v/ vt. (from) a scoate (de sub); a înlătura

render /rendə/ vt. a da

rent /rent/ s. chirie

repayment /ri:peimənt/ s. restituire

repellent /ripelənt/ adj. dezgustător

repugnant /ripʌgnənt/ adj. incompatibil, de neacceptat

request /rikwest/ s. cerere; request for correction= cerere de îndreptare

requisite /rekwizit/ s. condiţie cerută; adj. necesar

rescind /risind/ vt. a anula (lege, contract, etc.)

residual /rizidjuəl/ adj. rezidual

resort /rizɔ:t/ s. (to) recurgere (la); vi. (to) a recurge (la)

respondent /rispɔndənt/ s. (jur.) (în special în divorţuri) pîrît

responsibly /rispɔnsəbli/ adv. în mod responsabil

rest /rest/ vi. (upon) a se baza, a se bizui

restraint /ristreint/ s. constrîngere

result /rizʌlt/ vi. (in) a avea ca rezultat, a duce la; a avea loc, a se produce

reverse /rivə:s/ adj. invers, contrar; vi.(jur.) a da o sentinţă inversă

revisal /rivaizəl/ s. revizuire

rigg /rig/ vt. a truca

ring, rang, rung /riŋ; ræŋ; rʌŋ/ vi.(with) a răsuna, a vîjîi (de)

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rip	/rip/	vt. a tăia, a rupe (cu putere)
rob	/rɔb/	vt. a jefui
robber	/rɔbə/	s. tîlhar
roll	/roul/	s. rol; ghem
rule	/ru:l/	vt. (against) a decide (împotriva)
run	/rʌn/	vi. (up against) a da peste, a da ochi cu
ruse	/ru:z/	s. şiretlic, stratagemă

S

safeguard	/seifga:d/	s. garanţie
safety	/seifti/	s. (fig.) bunăstare
salvage	/sælvidʒ/	s. salvare, asistenţă maritimă
sanction	/sæŋkʃən/	vt. a autoriza
save	/seiv/	prep. cu excepţie...
scant	/skænt/	adj. redus, limitat
schedule	/ʃedju:l/	s. inventar
scheme	/ski:m/	s. aranjament, combinaţie
scope	/skoup/	s. competenţă
scowl	/skaul/	vi. a se încrunta
screw	/skru:/	s. şurub; vi. a (se) răsuci
script	/skript/	s. scriere
seal	/si:l/	s. pecete, sigiliu
secure	/sikjuə/	vt. a asigura
security	/sikjuariti/	s. garanţie, gaj
sensitive	/sensitiv/	adj. sensibil
separability	/sepərəbiliti/	s. caracter separabil
serve	/sə:v/	vt. (jur.) a notifica

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set, /set/ vt. (down)a consemna; a se întruni; (forth) a enunţa, a prezenta;(out) a prezenta, a pune în ordine, a defini, a demonstra, a expune; vt. (up) a înfiinţa, a stabili; vi. (out) a începe

setback /setbæk/ s. recidivă

settle /setl/ vt. a tranşa, a lămuri, a stabili, a fixa

settlement /setlmənt/ s. reglementare, înţelegere

set-up /setʌp/ s. acţiune (coll.) care pare prea uşoară

severely /siviəli/ adv. violent

sewer /sjuə/ s. canalizare

shareholder /ʃɛəhouldə/ s. acţionar

shear, sheared,shorn /ʃiə;ʃiəd;ʃɔ:n/ vt. (fig.) a retrage (treptat)

shortcoming /ʃɔ:t kʌmiŋ/ s. defect

sign /sain/ vt. (away) a ceda printr-un înscris

silk /silk/ s. (jur.) avocat regal

sinister /sinistə/ adj. dăunător, răufăcător

sink, sank, sunk /siŋk; sæŋk; sʌŋk/ vi. (in) a se întipări (în minte), a-şi face efectul (fig.)

sit, sat, sat /sit; sæt/ vi. a ţine şedinţă; a fi în şedinţă

slander /sla:ndə/ s. calomnie

sleek /sli:k/ adj. neted, lins

slightingly /slaitiŋli/ adv. în mod lipsit de consideraţie

slot /slɔt/ s. (mec.) crăpătură

sole /soul/ adj. unic, exclusiv

solely /solli/ adv. exclusiv

solicitor /səlisitə/ s. avocat, consilier juridic, avocat (consultant)

sound /sound/ adj. solid, irefutabil

specious /spi:ʃəs/ adj. plauzibil

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split, split, split /split/ vt. a împărţi

sponsor /spɔnsə/ s. garant; vt. a susţine

spouse /spauz/ s. (înv.) soţ (soţie)

spread, spread, spread /spred/ s. fermă (coll.SUA); vi.(out) a fi eşalonat, a se întinde

spring /spriŋ/ s. arc, resort

sprinkling /spriŋkliŋ/ s. un număr mic de... împrăştiat ici şi colo

squarely /skweəli/ adv. fără ocol, direct

staff /sta:f/ s. personal

stage /steidʒ/ s. cîmp

stake /steik/ s. mizã; to be at stake = a fi în joc, a fi în situaţie critică

stale /steil/ adj.(jur.) perimat

stamp /stæmp/ s. timbru; vt. a imprima (o marcă, etc.)

statecraft /steitkra:ft/ s. arta guvernării şi diplomaţiei

statute /stætju:t/ s. act al Parlamentului

stay /stei/ vt.(jur.) a amîna

stench /stenʧ/ s. miros urît, duhoare

straight /streit/ s. strîmtoare

strew, strewed, strewed(şi strewn) /stru; stru:d;//stru:n/ vt. a împrăştia; a acoperi cu

strike, struck, struck (şi stricken) /straik; strʌk//strikən/ vt. a lovi

structure /strʌkʧə/ vt. a alcătui; a organiza

stunt /stʌnt/ s. ispravă

stylus /stailəs/ s. ac (ca de patefon , de seismograf)

submit /səbmit/ vt. a prezenta, a expune, a supune (spre cercetare)

subpoena /səbpi:nə/ s. (jur.) somaţie (de prezentare) sub pedeapsa cu amendă

substantial /səbstænʃəl/ adj. concludent

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substantive	/sʌbstənʧiv/	adj. (jur.) esenţial
substitute	/sʌbstiʧu:t/	vt. (for) a înlocui (cu)
sue	/sju:/	vt. a intenta proces, a urmări în justiţie; vi. a cere implorînd
suffer	/sʌfə/	vt. a suporta, a tolera
suit	/sju:t/	s. (jur.) proces, acţiune
summon	/sʌmən/	vt. a convoca
summons	/sʌmənz/	s. (s.sing.)(jur.) citaţie; vt.(rar) (jur.) a trimite citaţie
sundry	/sʌndri/	adj. divers
supercilious	/sju:pəsiliəs/	adj. trufaş, sfidător
supersede	/sju:pəsi:d/	vt. a înlocui
supersession	/sju:pəseʃən/	s. înlocuire (desfiinţare)
supplant	/səpla:nt/	vt. a înlocui
surrender	/sərendə/	vt. a ceda, a renunţa la
surveyor	/sə:veiə/	s. inspector

T

take, took, taken, /teik; tuk; teikən/		vt. (up) a ocupa; a prelua
tape /teip/		s. bandă de lipit
taxation	/tækseiʃən/	s. (impunerea de) sarcini fiscale; impozite
taxicab	/tæksikæb/	s. taxi
tearjerker	/tiədʒə:kə/	s. povestire care stoarce lacrimi (coll.SUA)
temple	/templ/	s. clădire care serveşte unei activităţi publice sau unei organizaţii
tenancy	/tenənsi/	s. arendă
tenant	/tenənt/	s. chiriaş
tenet	/ti:net/	s. principiu

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term	/tə:m/	s. durată a activităţii; (jur.) sesiune
testator	/testeitə/	s. testator
testatrix	/testeitriks/	s. (fem.) testatoare
testily	/testili/	adv. cu asprime, cu ton iritat
thenceforth	/ðensfɔ:θ/	adv. de aici încolo, pe viitor
thereafter	/ðɛəraiflə/	adv. după aceea
thereby	/ðɛəbai/	adv. în acest fel
therein	/ðɛərin/	adv. acolo, în acel loc, în această privinţă (înv.lit.)
thereof	/ðɛərɔv/	adv. din aceasta
thereon	/ðɛərɔn/	adv. pe aceasta
therewith	/ðɛəwiθ/	adv. cu aceasta
thrust	/θrʌst/	vt. (out of) a izgoni (din)
tilt	/tilt/	vi. a se înclina, a se apleca
token	/toʌkən/	s. însemn, gaj, bon
tort	/tɔ:t/	s. prejudiciu, act care provoacă prejudiciu
trace	/treis/	vt. a trasa, a urma
track	/træk/	s. linie (ferată)
trade	/treid/	s. ocupaţie
transgression	/trænsgreʃən/	s. încălcarea (legii)
treason	/tri:zn/	s. trădare
treasurer	/trezərə/	s. trezorier
trend	/trend/	s. tendinţă, direcţie
trespass	/trespəs/	s. contravenţie, infracţiune
trust	/trʌst/	s. proprietate dată în grija cuiva, proprietate, bunuri aflate în grijă legală; (jur.) relaţie fiduciară în care o persoană (trustee) deţine dreptul de proprietate în folosul alteia
try	/trai/	vt. a judeca

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T-shirt /ti:ʃə:t/ s. maiou pe gît (cu mîneci scurte)

tuck /tʌk/ vt. a ascunde într-un loc închis

turn /tə:n/ vt. (to account) a profita (de), a valorifica

U

unconcern /ʌnkənsə:n/ s. (for) indiferenţă (faţă de)

unconscionable /ʌnkɔnʃnəbl/ adj. lipsit de scrupule, nejust, excesiv

underestimate /ʌnderestimeit/ vt. a subestima

undergo, underwent, undergone /ʌndəgóu; ʌndəwent; ʌndəgɔn/ vt. a suferi

underlying /ʌndəlaiiŋ/ adj. care stă la baza

unenforceability /ʌninfɔ:səbiliti/ s. cu caracter inaplicabil, inexecutabil

unheeding /ʌnhi:diŋ/ adj: (of) neatent (la)

unpredictability /ʌnpridiktəbiliti/ s. imprevizibilitate, caracter imprevizibil

unpredictable /ʌnpridiktəbl/ adj. imprevizibil

unreflective /ʌnriflektiv/ adj. (about) care nu se gîndeşte(la)

unresponsible /ʌnrispɔnsəbl/ adj. (to) neräspunzător (în faţa)

unresponsive /ʌnrispɔnsiv/ adj. (to) neimpresionabil (de),insensibil (la)

untainted /ʌnteintid/ adj. necompromis

update /ʌpdeit/ vt. a aduce la zi (prin suplimentare, corijare, etc.)

uphold, upheld, upheld /ʌphould; ʌpheld/ vt. a sprijini, a susţine

upright /ʌprait/ adj.vertical, perpendicular

usage /ju:zidz/ s. datină, obicei, uzanţă

usher /ʌʃə/ s. aprod

utterance /ʌtərəns/ s. exprimare, enunţ

uttering /ʌtəriŋ/ s. punere în circulaţie

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V

vacant	/veikənt/	adj. liber (neînchiriat)
vacate	/vəkeit/	vt. (jur.) a anula
vendor	/vendɔ:/	s. vînzător (negustor)
venue	/venju:/	s. locul unde trebuie să se prezinte juraţii pentru proces
verbiage	/və:biidʒ/	s. vorbărie, frazeologie
vest	/vest/	vt. a învesti, a împuternici
vexatious	/vekseiʃəs/	adj. făcută în scopul de a contraria
void	/vɔid/	adj. nul

W

wade	/weid/	vi. a merge cu greu (prin apă)
waive	/weiv/	vt. (jur.) a renunţa la, a abandona
warrant	/wɔərənt/	s. procură, warrant of attorney= împuternicire de reprezentant; vt. a justifica, a îndreptăţi
welfare	/welfɛə/	s. bunăstare, prosperitate
weight	/weit/	s. (fig.) importanţă
whence	/wens/	adv. de unde
whereby	/wɛəbai/	adv. (înv.) cu/prin ce mijloc, cu/din/prin care; (cel) (interog.) prin care, prin mijlocirea căruia.
whereof	/wɛərɔv/	adv. de/spre care
whip	/wip/	vt. a biciui
whittle	/witl/	vt. (away) a reduce (treptat)
wiggle	/wigl/	vi. a se strecura, a se mişca/răsuci (cu mişcări scurte)
will	/wil/	s. testament

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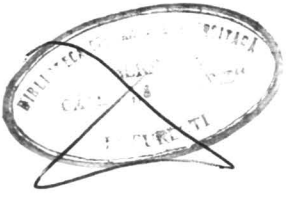
witness	/witnis/	**s. martor**
woodpecker	/wudpekə/	**s. (ornit.) ciocănitoare**
wording	/wə:diŋ/	**s. formulare**
work	/wə:k/	**vi. (out of) a depăşi, a ieşi(din)**
wow	/wau/	**interjecţie (de surpriză, uimire, plăcere)**
wrapper	/ræp/	**s. ambalaj**
writ	/rit/	**s. ordonanţă, citaţie, mandat**
wrongful	/rɔŋful/	**adj. greşit, nelegal**
wrongfully	/rɔŋfuli/	**adv. greşit, nelegal**



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